UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555(JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

April 13, 2011

10:02 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Debtors' Motion for Authorization to Make Additional Investments with Respect to 25 and 45 Broad Street

HEARING re Motion of Lehman Commercial Paper Inc. for Authority to Consent to its Non-Debtor Affiliate Lehman ALI Inc. (i) Entering into Commitment Letter with Innkeepers USA Trust; (ii) Supporting the Chapter 11 Plan of Certain Affiliates of Innkeepers USA Trust; and (iii) Participating in the Auction for Certain of the Assets or Equity of Innkeepers USA Trust

HEARING re Debtors' Motion for Approval of the Purchase of Notes Issued by Pine CCS, Ltd. from Barclays Bank PLC and the Termination of the Pine Securitization

HEARING re Notice of Presentment of Amended Order Authorizing the Debtors to Establish Procedures for the Settlement or Assumption and Assignment of Pre-Petition Derivative Contracts

HEARING re Debtors' Motion to Compel The Ad Hoc Group of Lehman Brothers Creditors to Comply with Federal Rule of Bankruptcy Procedure 2019

HEARING re Motion of the Ad Hoc Group of Lehman Brothers Creditors for Entry of (I) an Order Scheduling a Disclosure Statement Hearing and Approving the Form and Manner of Notice Thereof and (II) an Order Approving the Disclosure Statement

HEARING re Debtors' Motion for Authorization to Establish and Implement Procedures in Connection with Discovery Related to Plan Confirmation

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P R O C E E D I N G S

THE COURT: Good morning. Be seated, please. We have a lot of people standing in the aisle. And we do have an overflow room. I'm just going to make the statement that some of you will be a lot more comfortable if you don't have a speaking role or anticipate one going down the hall to Room 608. I'm not going to compel it but I'm going to suggest it because it would be not only more comfortable for you but for everybody else.

MR. MILLER: Good morning, Your Honor. Harvey Miller, Weil, Gotshal & Manges, for the debtors. This is the April omnibus hearing, Your Honor. Looking at the size of the overflow, I tend to say you may not believe it but it's a relatively short agenda. There are seven matters on the agenda for this morning including, Your Honor, three uncontested matters. Mr. Perez will be handling the first two uncontested matters, Your Honor.

THE COURT: Okay. Thank you.

MR. PEREZ: Good morning, Your Honor. Alfredo Perez on behalf of the debtors. Your Honor, the first matter is a matter involving 20-45 Broad. That's a building not too far from here that was the subject of a conversion. Lehman is in the process of foreclosing on the building and they need to add some additional investment in it, approximately twenty-five million dollars.

Your Honor, we've consulted with everyone. There doesn't seem to be any objections with respect to that. We did file an affidavit. Mr. Fitts filed an affidavit in support of that. So we would request that that be entered.

THE COURT: I've reviewed the papers and I'm prepared to approve this. There was a statement made by the ad hoc group in reference to each of these uncontested matters including 25 and 45 Broad Street. But I recognize from reading that that it's really more of a statement of their general position in the case than it is a problem with this particular motion. But I'm just going to ask if anybody wishes to be heard in reference to 25-45 Broad Street. Apparently not, so it's approved.

MR. PEREZ: Thank you, Your Honor. Your Honor, the next matter that we have on the agenda is the Innkeepers' motion. Your Honor, that was also the subject of extensive discussion with the ad hocs as well as various other groups. We have filed, I think, three additional amended forms of motion just to address all of the issues that were raised by the various groups.

But just to recap, Your Honor, when we were here before, we were doing a motion that basically took all the hotels and converted Lehman's approximately 220 million dollar mortgage into fifty percent of the equity. This deal, Your Honor, involves sixty-four of the hotels, the ones on which

Lehman and Midland have liens. It converts that to equity. Lehman would get fifty percent of the interest plus twenty-six million dollars in cash. There is going to be a new manager, likely, and there will be a sell-down of twenty percent of the equity, ten percent each by Lehman and Five Mile, which is the other participant. And that would return approximately thirty-five million dollars to the estate. So if all of the transactions are done, Lehman would end up with forty percent of the equity in the reorganized debtor as well as approximately sixty-one million dollars in cash. The existing DIP loan which the Court previously approved would be repaid. It's less than ten million dollars right now. And if the Court recalls, that was really intended for capital improvements and operating expenses on the hotels that were subject to our lien.

Your Honor, this -- unlike the last time, Your Honor, this commitment letter has been approved by the Innkeepers Court. They have a disclosure statement hearing set for May. Bids are due in late April. The auction is the beginning of May. I think May 10th is the disclosure statement hearing in that case. And the confirmation hearing is scheduled for June, Your Honor. So again, we filed an affidavit on behalf of Mr. Lascher who was the person directly involved. And again, we would request that the Court enter the order.

THE COURT: I'm generally familiar with the Innkeepers case and read Judge Chapman's decision in Innkeepers dated

April 1 which recites some of the facts of the circumstances of the auction process in that case. I've also reviewed the submissions in connection with what you're now requesting from me. And in the absence of objection, and there are none, this is approved.

MR. PEREZ: Thank you, Your Honor. May the people who are here for Innkeepers and 25 Broad be excused?

THE COURT: I think that would be a good idea

MR. PEREZ: Mr. Fitts and Mr. Lascher, specifically.

MS. MARCUS: Good morning, Your Honor. Jacqueline Marcus of Weil Gotshal & Manges on behalf of Lehman Brothers Holdings Inc. and its affiliated debtors. Item number 3 on the agenda, Your Honor, is the debtors' motion for approval of the purchase of notes issued by Pine CCS, Ltd. from Barclays Bank PLC and the termination of the Pine securitization.

As noted on the agenda, Your Honor, this is an uncontested motion. Nevertheless, in light of the magnitude of the dollars involved and the Court's observations at other hearings, I'd like to summarize the relief sought in the motion and address any questions that the Court may have.

The debtors have filed a declaration and a supplemental declaration of David Walsh of Alvarez & Marsal in support of the motion. Mr. Walsh, who is present in court, had the primary responsibility for negotiating the proposed transaction.

Pursuant to the motion, the debtors seek approval for Lehman Commercial Paper Inc. to purchase the Class A-1 notes issued by Pine. Specifically, Class A-1 notes held by Barclays Bank PLC in the face amount of approximately 927 million for a purchase price of 805 million dollars; and Class A-1 notes held by LBHI in the amount of approximately 4.1 million dollars for a price equal to par plus accrued interest.

Despite the purchase price of 805 million, as described in the motion, LCPI only has to pay approximately 241 million of its unrestricted cash for the Barclays notes. The balance would come from cash being held by U.S. Bank on behalf of Pine and cash held by LCPI in respect of collections on the underlying assets.

Additional relief sought in the motion is authorization for LBHI to release its contingent security interest and certain securities issued by Pine that are held by LCPI, namely, the Class A-2 notes and the Class B notes, which have no amounts outstanding, and the subordinated note in the amount of thirty-two million dollars. As set forth in the motion, the debtors have concluded that it's very unlikely that the circumstances that could give rise to such a security interest would ever materialize.

Finally, Your Honor, out of an abundance of caution, the motion seeks authority for LCPI once it has acquired all of the notes to terminate the Pine securitization, the effect of

which would be to restore the underlying assets, the loans that were participated to Pine to LCPI which is the lender of record on most of the loans. Termination of the Pine securitization will enable LCPI to more actively manage the portfolio and thereby maximize its value. A summary of the terms of the note sale and termination agreement is included in the motion.

The debtors engaged in extensive negotiations with representatives of the creditors' committee prior to reaching the agreement with Barclays. In addition, subsequent to the filing of the motion, the debtors have engaged in discussions with representatives of the ad hoc committee, the SIPA trustee and other creditors. As a result of such continuing discussions, we made a clarifying change to the note sale and termination agreement and a change to the proposed order each of which was filed, together with blacklined copies, yesterday afternoon.

If I may approach, Your Honor, to hand you the blacklined copies?

THE COURT: Yes. Thank you.

MS. MARCUS: The change to the note sale and termination agreement clarifies in Section 13 on page 7 of the blacklined copy that nothing contained in the release provision is intended to affect the parties' rights with respect to the Rule 60(b) litigation other than with respect to the Barclays notes.

The change to the proposed order addresses the issues raised by the ad hoc committee with respect to certain alleged intercompany issues between the LBHI estates and the LCPI estate and that change in the second decretal paragraph on page 3 of the blacklined order.

The creditors' committee has filed a statement in support of the motion; the SIPA trustee has filed a statement that indicates that it does not object to the motion. And as the Court noted, the ad hoc committee has filed a statement. It appears that the ad hoc committee is seeking clarification from the debtors regarding the effect of the supplemental declaration filed on Friday. To be perfectly clear, Your Honor, the supplemental declaration was intended to supplement the record for the Court and not intended to limit the reservation of rights contained in the proposed order.

The debtors believe that the relief requested in the motion is in their best interest and the best interest of their creditors. Accordingly, for all the reasons set forth in the motion and based on the evidentiary support provided by the Walsh declarations, unless the Court has further questions, the debtors request that the Court enter the proposed order.

THE COURT: I'm prepared to do that. I've read the Walsh declarations and I'm familiar with the Pine securitization in part because it was the subject of discussion and evidentiary support in connection with the 60(b)

litigation. But if any party wishes to comment, particularly the creditors' committee, this is an opportunity to do that. But this is an unopposed motion.

MR. DAKIS: Your Honor, Robert Dakis from Quinn Emanuel Urquhart & Sullivan for the official committee of unsecured creditors. As Your Honor is aware, the committee has filed a statement in support of this motion. I won't repeat what's in our pleading, but I did want to focus on two areas with which the committee took particular interest.

First, the committee's financial advisors had considerable time to assess the economics of the transaction including looking at the value of the underlying securities. Based on the work done by the committee's financial advisors, the committee is comfortable that the economics of the deal are fair and reasonable and represent a sound exercise of the debtors' business judgment.

Also, Your Honor, the committee focused particularly on certain inter-estate issues. And with the reservations of rights that both the committee negotiated into the initial form of the order and into the sale agreement and the reservations of rights that the ad hoc group negotiated for, the committee is comfortable that these issues are preserved until the appropriate time.

THE COURT: All right. Thank you. It's approved.

MR. MILLER: Thank you, Your Honor.

MS. MARCUS: Your Honor, Richard Slack will handle the next matter on the agenda. May I be excused?

THE COURT: You may be excused.

MS. MARCUS: Thank you.

(Pause)

THE COURT: Good morning.

MR. SLACK: Good morning, Your Honor. Richard Slack from Weil Gotshal & Manges for the debtors. Your Honor, the matter I'm up here to handle is the approval of the sixth supplemental order to establish procedures for the settlement or assumption and assignment of derivative contracts. We seek a technical amendment after a request of the Bank of New York, Your Honor, that authorizes the debtors to enter into settlements with respect to certain transactions that are listed in that motion in Exhibit 1. And that would provide that the debtor can resolve these matters without the need for BNY to consent to the actual settlements. All of these transactions are transactions where BNY acts as trustee for the noteholders of that particular series. What makes this motion a bit different, Your Honor, is that BNY has, in fact, agreed to a settlement with respect to these transactions and has not objected to the efforts to carve these transactions back into the derivative procedures order. To the contrary, Your Honor, BNY has actually requested that this motion be made as a condition to the settlement that's been reached.

As we've informed the Court in the past, the derivative procedures order has been a huge success. It's allowed the debtors to resolve disputes with nearly 3,000 counterparties without the expense and delay of 9019 hearings and has allowed the debtors to collect over eleven billion dollars as a result of these settlements. This technical amendment would allow us to continue with that success.

THE COURT: Do I understand that the technical amendment only applies to BNY as trustee?

MR. SLACK: Yes, Your Honor. And the reason for that is that the history of the amendments here when we adopted the original derivatives procedures order, there were a number of objectors. One of those was BNY. And so, BNY, at the beginning -- we had carved out all of the transactions that BNY acted as a trustee. Later on, Your Honor, we agreed in a subsequent supplement to that order to allow them to essentially be carved back in as long as BNY consented. This technical amendment requested by BNY literally just lists those particular transactions that we're going to carve back in that now can be settled even without BNY's consent. And again, BNY has, in fact, consented to this technical amendment. So absent BNY's objection, Your Honor, these would all be carved back in.

One bit of background, Your Honor, just because the one objector we have raises it, is that the technical amendment will allow the consummation of a settlement which is a

comprehensive settlement, Your Honor, with respect to the mini bond transactions that I know Your Honor's aware of from the adversary proceeding. And as Your Honor will recall, there are two levels to that: there's the mini bond level and then there's the Saphir level. And I won't go through that. But I think the important thing for Your Honor is that this settlement, which was enormously complicated, affects both the mini bond level and the Saphir level. And it had as parties the trustees at both levels, the SPVs at both levels, PwC as the receiver for the mini bonds. So, Your Honor, it was quite an effort to get this settlement negotiated.

At the end of the day, Your Honor, the settlement goes through. The mini bondholders will receive approximately seventy to ninety-five percent of their original investment depending on what series they hold. And --

THE COURT: This is the settlement that was structured in Hong Kong.

MR. SLACK: Well, this settlement actually is obviously cross-border because it's a settlement -- it's a new settlement that really goes on top of the one that had been done in Hong Kong, Your Honor. So this settlement was negotiated by the parties to the swaps, LBSF, the trustees, the SPVs, PwC as the receiver, and it goes on top of the one that we talked about before, the Hong Kong settlement.

THE COURT: And what's the status of the Hong Kong

settlement?

MR. SLACK: I think the Hong Kong settlement was consummated completely, Your Honor. So that settlement which we talked about before had certain distributing banks buy some of the mini bonds. And so some of the mini bondholders got out then. And so, this is, again, on top of that, both for the distributing banks who are also parties to the settlement, by the way, as well as the rest of the mini bondholders that were not necessarily in the original settlement. So this comprehensively will resolve everything, Your Honor.

THE COURT: And what will the realization be for the mini bondholders?

MR. SLACK: For the mini bondholders?

THE COURT: Yes.

MR. SLACK: The mini bondholders, in this settlement, will get somewhere between seventy percent and ninety-five percent of their investment back depending on the series that they hold. One of the exhibits that was put in by the objectors actually sets out the various charts for each series what the recovery is going to be.

THE COURT: And BNY's role in this is what?

MR. SLACK: BNY is the trustee at the Saphir level. So to the extent that there was a settlement at the Saphir level, BNY was a party to the settlements with respect to those transactions. And those are the ones being carved back in in

the six supplemental procedures order.

THE COURT: All right. And is approval of this supplement to the procedures order a condition to the effectiveness of the settlement that you just described?

MR. SLACK: It is, Your Honor.

THE COURT: Okay.

MR. SLACK: At BNY's request, they -- even though they were signing the agreement and support this, they wanted there to be a procedure by which the Court approved the derivatives procedure supplement.

THE COURT: Is BNY represented today and does BNY have a position to express in connection with this contested matter?

MR. SCHLECKER: Your Honor, David Schlecker from the Reed Smith law firm for BNY Corporate Trustee Services. Mr. Slack has accurately and aptly stated the nature of the settlement. And BNY has requested that the sixth supplement, the order, be signed by Your Honor and that it is a condition precedent to the ultimate settlement going forward. The objectors in this case don't have any privity with BNY and, as Mr. Slack has indicated, BNY is the trustee at the Dante level and not at the mini bond level.

THE COURT: All right. Thank you.

MR. SLACK: So, Your Honor, one more point about the settlement which, frankly, is not at issue really in front of Your Honor. But one more point, I think, as a matter of

background is that the settlement will only become final if seventy-five percent of the noteholders at each series approve it. So in order for the settlement to go through, there has to be widespread, not just a majority but a supermajority of the mini bondholders have to approve this.

So, Your Honor, the only objection that was received was from the Wong plaintiffs in connection with this. As Your Honor knows, the Wong plaintiffs have a separate adversary proceeding relating to the mini bonds. And the Wong plaintiffs have essentially argued that the derivatives procedures order should not be entered or the sixth supplement shouldn't be entered because the settlement that it's conditioned on is somehow too rich for the estate. In other words, they're not arguing that this isn't a good thing for the estate. They're arguing somehow that this isn't good for noteholders.

We think the objection should be overruled on a number of grounds. First, Your Honor, the mini bondholders have already expressly consented to the settlement procedures in the derivative procedures order. As Your Honor might recall, the Wong plaintiffs had filed an objection sort of in between the supplement and the time we had the third supplement they filed an objection. We resolved that. And there was a stipulation that was put in place. And the terms of that stipulation were, number one, that the terms of the assumption and assignment procedures of the derivatives order would not be applicable to

derivatives contract related to the Wong plaintiffs series. So that's just the assignment and assumption procedures. And it says specifically that nothing else was modified including the settlement procedures and that the Wong plaintiffs would withdraw their objection.

What that means, Your Honor, is the Wong plaintiffs have already agreed to be bound by the settlement procedures of the derivative procedures order. And as I just explained earlier, the only reason these are getting carved back in is because BNY had objected. And if BNY is dropping their objection then I would say that the Wong plaintiffs who've already agreed to be bound by the settlement procedures don't have the ability to go back with respect to the stipulation that was signed in the order that Your Honor signed.

The second thing, Your Honor, is that the objection is really misdirected. As I said, the objection by the Wong plaintiffs is not that the estate is somehow unfairly treated in this settlement but that noteholders are unfairly treated. But the derivatives procedures order, Your Honor is not directed at fairness to noteholders. Essentially, what the derivatives procedures order does is it says if you go by the procedures, you don't have to have the 9019 hearing. And the 9019 hearing is directed at whether it's fair to the estate not whether it's fair to other constituents such as noteholders. So even if the derivatives procedures order wasn't entered as

the Wong plaintiffs suggested it shouldn't be, all that would happen, Your Honor, is likely we'd be back in a 9019 and none of the objections that the Wong plaintiffs are making would be relevant or available to them in a 9019 hearing.

The Second Circuit has stated in a Refco decision from 2007 -- and that's at 505 F.3d 109 -- exactly this proposition. And in that case, which I think is analogous here, there was an investment vehicle called Sphinx which was a Cayman Island company and Refco was hired to manage the investments there. When Refco filed for bankruptcy, or I should say just before, it delivered 300 million to Sphinx on behalf of the investors. And the estate then sought to return that money in a preference. Sphinx ended up negotiating a settlement with respect to that preference action. And investors came in and said that that was too good for the estate. In other words, the investors were not being treated fairly. And the Second Circuit held that those investors of an investment company or, essentially, a creditor, did not have standing. They weren't a party in interest for purposes of the Bankruptcy Code. But the Second Circuit also held that the kind of objection that was made, i.e., that the investors were treated unfairly was not appropriate for the 9019. And the Second Circuit held "A bankruptcy court's obligation is to determine whether a settlement is in the best interest of the estate, not to ensure that the creditors' representatives are honoring their

fiduciary duties." They then went on to say "We agree that the bankruptcy court's astute observation that to permit investors to lodge objections to the settlement on the basis of their fiduciaries' appropriate approval would entirely skew the task of bankruptcy court and that it would be extremely unfair to debtors to force them to negotiate not only with the legal representatives of creditors but also with any interest holders of a creditor."

So again, in short, Your Honor, the arguments that the Wong plaintiffs are making wouldn't be appropriate for a 9019 and, consequently, they're not appropriate in terms of the derivatives procedures order.

Last, Your Honor, the Second Circuit decision in Refco leads really to the next point which is that the Wong plaintiffs are not a party in interest for purpose of the bankruptcy, for purpose of the motion. As the counsel for BNY stated, the Wong plaintiffs are not even noteholders that have privity with BNY because they're not holders of notes where BNY is the trustee. They're holders of notes where HSBC is the trustee. And here, like in Refco, the Wong plaintiffs are merely investors in an entity that's a creditor. And again, as the Second Circuit in Refco held, only Sphinx, not individual investors, where even investors as a group could assert a claim against the Refco estate. And only Sphinx was permitted to negotiate a settlement with the committee. Investors maintain

a financial interest in Sphinx but they are not a party in interest within the meaning of the Bankruptcy Code. The party in interest in the bankruptcy sense representing the investors' financial interest is Sphinx.

Lastly, Your Honor, I want to make one point because it's a point that I think the Wong plaintiffs spent a lot of time on in their papers. And it's just flat out wrong. Throughout their objection, the Wong plaintiffs repeatedly assert that the approval of the derivatives procedures order will somehow conflict with district court orders. And these assertions are really a gross mischaracterization of the district court order that were rendered by Judge Pauley and Judge McMahon in this case. As Your Honor will recall, the Wong plaintiffs had filed an original complaint that asserted only direct claims against LBSF. This Court dismissed those claims and declined to allow the plaintiffs to amend. That was appealed and Judge Pauley actually affirmed the dismissal of Your Honor's -- of the complaint and affirmed Your Honor's decision but did allow them an attempt to replead a derivative claim which they hadn't brought originally. Nothing in that decision allows the Wong plaintiffs to essentially assert the rights to negotiate settlements. And there's nothing in the decision by Judge Pauley that prevents this settlement in any way, shape or form.

Lastly, Your Honor, there's a lot of discussion about

Judge McMahon's opinion which allowed an interlocutory appeal on an issue. And although you wouldn't know it from the Wong plaintiffs' brief, Judge McMahon was very careful to make it clear she was not commenting on the merits of that particular issue. Judge McMahon wrote, "Nor, for that matter, should anything in today's decision be interpreted as indicative of whether this Court will or will not uphold Judge Peck's decision. The Court expresses no opinion on the merits of BNY's appeal." So again, Judge McMahon's opinion has nothing whatsoever to do with this motion.

With that, Your Honor, we urge the Court to adopt the sixth supplement to the derivatives procedures order.

THE COURT: All right. Thank you.

MR. DAVIS: Good afternoon, Your Honor. Jason Davis on behalf of the mini bond noteholders in the adversary proceeding 09-1120. We have objected to the proposed order for some of the reasons that Mr. Slack talked about. Critically, what he did mention was that this order is necessary to settle claims concerning the Saphir notes. The Saphir notes are listed on Exhibit 1 to the proposed order. All of those Saphir notes and only those Saphir notes are the notes that collateralize the mini bonds that are subject to adversary proceeding, 09-1120. As debtors acknowledged, that adversary proceeding has gone up to the district court. And the district court reversed this Court's decision that the mini bond

noteholders lack standing to sue to protect their interest in the Saphir notes. So --

THE COURT: That's really not true. I've read Judge Pauley's decision, as I'm sure you have, and I agree with Mr. Slack that your papers mischaracterize the decision and your argument now is mischaracterizing the decision. So you might as well move on to another subject. That decision speaks for itself. And you have a standing issue that relates to BNY. So let's talk about that.

MR. DAVIS: Okay. Yes, Your Honor. The standing issue as to BNY is directly related to Judge Pauley's decision because Judge Pauley said it would not be futile to allow my clients to amend the pleading to step into the shoes of HSBC Bank USA. Stepping into the shoes of HSBC Bank USA places the adversary proceeding structurally in an identical position to the Perpetual proceeding with which this Court is intimately familiar. The Perpetual proceeding in New York is the one that went up to Judge McMahon said that LBSF does not deny that since the decision concerning the ipso facto provisions was handed down has used it as leverage in settlement negotiations concerning billions of dollars worth of similar transactions.

THE COURT: Okay. Let's just say that's true. That's good for the estate. Why is that a problem?

MR. DAVIS: Because the hundreds of millions of dollars that go to the estate did not go to the mini bond

noteholders.

THE COURT: Well, the mini bond noteholders --

MR. DAVIS: It's a zero sum situation.

THE COURT: -- are getting the huge recovery that the Wong class is not responsible for. And I understand that you're here as a class action lawyer but the mini bondholders are receiving significant recoveries, it seems, ahead of every other creditor constituency that touch Lehman as a result of activities in Hong Kong and a settlement which may or may not be approved. It depends upon what the mini bondholders individually decide when I presume they're going to be solicited to accept or not accept this proposed settlement. So why are you opposed to that? This is good for your class.

MR. DAVIS: It's -- what would be better for the class is if they got what they're supposed to get which is a hundred percent. And every dollar that goes to the estate is really increased by their ability to use the ipso facto decision to negotiate a better settlement for themselves. And --

THE COURT: Well, we're not --

MR. DAVIS: -- there's no reason --

THE COURT: -- talking about the ipso facto decision from Perpetual, a case which was settled. We're talking about whether or not a certain procedures order that apparently, your class once consented to should be modified to permit settlements without the need for BNY consent. That's what's

before the Court. How do you have a position with respect to that narrow issue? Don't talk to me about ipso facto clauses 'cause that's not what this is about.

MR. DAVIS: Well, what this -- the argument that plaintiffs have somehow agreed to the derivatives procedure order is just bizarre. It's a bizarre argument. The settlement that we entered into with debtors deals with assignment and assumption procedures. There's assignment and assumption procedures and then there's settlement procedures. Settlement procedures was explicitly carved out of that stipulation. We didn't agree to anything concerning settlement procedures. And the settlement procedures at issue here concern the Saphir notes that Judge Pauley discussed twelve times in his opinion.

THE COURT: Is that it? Do you have anything more?

MR. DAVIS: No, Your Honor.

THE COURT: Okay. The objection is overruled. And the sixth amendment to the procedures order is approved. There are multiple reasons for the decision but perhaps the most basic one is that the Wong plaintiffs do not really have privity with BNY, have no real standing here, are not adversely affected by the modification of the order as requested by BNY. And whatever rights the Wong plaintiffs have in the adversary proceeding will be decided in that adversary proceeding.

I'll accept an order.

MR. SLACK: Thank you, Your Honor.

MR. MILLER: Harvey Miller for the debtors once again. Your Honor, item number 5 on the agenda is the debtors' motion to compel compliance with Bankruptcy Rule 2019 by the ad hoc group. The ad hoc group, Your Honor, from the debtors' perspective, functions as a committee within the parameters of Bankruptcy Rule 2019. You cannot avoid the application of Bankruptcy Rule 2019 by calling yourself a group when you function essentially as a committee. The group has appeared in these proceedings to give its position on various and many, many matters as a unified group with allegedly large holdings with the obvious intent of persuading the Court and influencing the Court as to those matters. The ad hoc group is represented by one set of attorneys, one financial advisor. And the attorneys do not represent the individual members of the group. There are twelve members of the group as far we are able to ascertain. And the activities of the group are essentially within the parameters of Bankruptcy Rule 2019.

The ad hoc has interposed, Your Honor, a limited objection to the motion. And basically, what that limited objection relates to as set forth in paragraph 2 that the relief requested would be a little benefit to the debtors themselves. That argument or defense, Your Honor, misperceives the purpose of Rule 2019. It is for all parties in interest to have access to the information that's required by Rule 2019 and

not just the debtors. And the rule, in fact, requires that the statement be filed with the Court. The information that was furnished to the debtors was furnished on the basis that it would be held confidential. And the group's attorneys specifically said they would require a court order to release the information so that other parties would have access to it.

In paragraph 3, Your Honor, the ad hoc group advocates greater transparency generally in these cases. The debtors wholeheartedly agree. The discovery protocol motion which will be heard later this morning is a step forward in that direction. However, it doesn't obviate the application of Rule 2019. The debtors agree that the requirements of Rule 2019 should be enforced. If the ad hoc group believes that there are other entities that are subject to 2019, it is free to make appropriate motions.

The limited objection goes on, essentially, Your Honor, to argue that the group should not be required to make a disclosure unless other parties are likewise required to make disclosure and again advocates uniform disclosure requirements that are fair and tailored specifically to the needs of the case. Again, Your Honor, the debtors favor full disclosure, full transparency but that does not constrain the application of Rule 2019.

The ad hoc group clearly functions as a committee. It has all of the same attributes that were discussed and

addressed by Judge Gropper in the Northwest Airlines case which is cited in the pleadings, Your Honor, in which he directed full compliance with Rule 2019.

The issue of uniform disclosure proceedings as received by the ad hoc group is a separate and distinct matter and not part of this bilateral motion. So paragraphs 5, 6 and 7, Your Honor, are really not pertinent to this particular motion. The debtors have no objection to parties working to develop a consensual framework for disclosure. Nevertheless, in the absence of such a framework, Rule 2019 should be enforced.

The ad hoc group, consisting of twelve members acts in concert. Its attorneys represent the group which acts collectively according to its own formation documents. The group never hesitates in each presentation to note that it is a group and that it represents twenty plus billion dollars of claims against LBHI.

The ad hoc group has never filed a statement under Rule 2019. Rather, White & Case, as its attorneys, has filed statements under Rule 2019. The rule requires that the group which acts as a committee to file the requisite disclosure documents under Rule 2019.

Moreover, Your Honor, as a plan proponent, it is necessary and appropriate and logical that the group meet all of the requirements of the Bankruptcy Code and the rules of

bankruptcy practice and all other applicable local rules. Otherwise, the group, as a plan proponent, Your Honor, cannot comply with Section 1129(a) of the Bankruptcy Code.

In this district, strict compliance with Rule 2019 is the rule. Indeed, it is hard to understand the reluctance and rigid opposition to compliance by the ad hoc group and others who oppose the application of Rule 2019. In substance, the ad hoc group asserts that Judge Gropper was wrong in Northwest, that statements made by Judge Gerber in the General Motors case are in error and this Court should look to bankruptcy courts in other districts for its interpretation and construction of Rule 2019. Great emphasis was put on the decision of Judge Sontchi in the Delaware bankruptcy court in the Six Flags case. However, there's a split even in the Delaware bankruptcy court as to the applicability of Rule 2019 as evidence by Chief Judge Walrath's decision in the WaMu case.

Notwithstanding the contentions of the ad hoc group in its limited objection, it has, in its arguments before this Court, taken the position that it represents the interests of the bondholders against LBHI. It is not a question of the practical approach; it is a question of enforcing the rule. As a group that's actively involved in these cases and a plan proponent, it must be held to strict compliance with the rule and full and complete disclosure of all information required by the rule so that positions taken by the ad hoc group may be

evaluated in the perspective of the economic interest of that group.

Now, we submit, Your Honor, that pari delicto is not a defense. The fact that others who may be subject to Bankruptcy Rule 2019 are not complying doesn't obviate the requirement on the part of the ad hoc group, Your Honor.

THE COURT: Mr. Miller, I have a question about timing.

MR. MILLER: Yes, sir?

THE COURT: One of the things that I have observed about Rule 2019 -- and I actually did a little research on this last August. I was speaking on a panel and the subject was the revision of 2019 as adopted by the bankruptcy rules committee which is not yet in effect, so we're dealing with the old version of the rule. And I took a look at the docket as it then existed and counted up the number of 2019 statements that had been filed. And then I took a look at the 2019 statements randomly and discovered that they were mostly not at all useful.

One of the things that I have observed -- and I think this is true in virtually every decision involved in 2019 is that the rule has weaponized in the sense that parties use compliance with 2019 as a form of strategic leverage in bankruptcy cases large and small in order to, in effect, put groups or committees in a position of having to disclose

information that might be proprietary or that might be embarrassing or that they might prefer to keep private.

Is the timing of today's motion driven by the fact that there is also another contested matter relating to disclosure statements in the case involved in competing plans? And one of my concerns -- and I just want a fair dialogue on this point -- is that the timing of the 2019 motion is suspiciously tied to the other contested matter, which I understand has been largely resolved, involving competing disclosure statements to be heard on the same day.

MR. MILLER: The answer to your question, Your Honor, is absolutely not. The debtors have been in extensive discussions with the ad hoc group about compliance with 2019. And to some extent, the attorneys for the ad hoc group did provide certain information on a confidential basis. In all of those discussions, Your Honor, which go back months, we always said to Mr. Uzzi representing the ad hoc group, you're not fully complying. And if you don't comply, you're forcing us to make a motion under 2019. Why don't you just comply with the rule and that will simplify it?

This has no connection, Your Honor, with the other contested matters that are on the calendar. It is exacerbated, I would say, Your Honor, by the fact that the ad hoc committee has filed an alternative plan. And as a plan proponent, it is even more important that the ad hoc group comply with 2019.

So this is not being used, Your Honor, for tactical purposes. This is being used to enforce the rule so that there is full disclosure and full transparency. As a plan proponent, Your Honor, people are entitled to know what are the economic interests of the ad hoc group just like any other -- any creditors' committee, Your Honor. And of all the 2019s that have been filed, Your Honor, they're mostly by attorneys. In fact, I think they're all by attorneys. And what I'm pointing out, Your Honor, is the rule requires the group to file and the group has not filed, Your Honor. And as I understand it, reading the limited objection, they really don't -- essentially are saying we'll file but we don't want to file unless everybody else has to file. Well, that's not a defense of the application of the rule. It's like saying. I passed the red light and you caught me but you can't give me a ticket unless you give a ticket to everybody else. That simply is not a defense, Your Honor. Thank you.

THE COURT: Okay.

MR. UZZI: Good morning, Your Honor. Gerard Uzzi of White & Case on behalf of the ad hoc group. Your Honor, just very briefly on the issue of the application of 2019 to ad hoc groups or committees or loose alliance of creditors, how ever people want to style it, we believe simply that the reasoning set forth by Judge Sontchi in the Six Flag decision is the better reasoning. I don't intend to argue with Your Honor -- I

can't say it better than Judge Sontchi has. And in any event, I suspect that Your Honor has already formed his own opinion. So I don't need to belabor the record unless, of course, Your Honor has questions with respect to that.

I would like to spend a little bit of time, though, Your Honor, on the issue of selective enforcement and timing and, putting aside what the true motivations may be, the impact of the appearance of a potential litigation sword and what it might have in the case. And, Your Honor, what we've said in our papers is that we believe transparency is important. We've also said that we recognize the uniqueness of these cases and the overwhelming complexity of the capital structure here. And that capital structure and that complexity plays out in front of Your Honor with respect to the Chapter 11 debtors. And that's complex enough. But there's also, I don't even know how many, Your Honor, number of foreign affiliates out there that are in foreign proceedings in front of foreign tribunals with creditors' committees in those proceedings that have varying degrees of authority. And I'd you to keep that last part in mind with respect to creditor influence maybe in foreign proceedings for something I'm going to say in a little while. But the complexity of the capital structure leads to potential conflicts of interest. And in this case, perhaps it's inevitable that we are going to have conflicts of interest.

Now there is nothing inherently wrong in somebody

having a conflict of interest. There's nothing wrong with people holding multiple positions across the capital structure. But what we're talking about here, Your Honor, is a settlement -- well, at least the debtors' plan and our plan right now are variations of settlement plans. We're going to talk about a litigation over a settlement. We're going to have plan negotiations that, really, I don't think are started in any sort of robust fashion.

And when you're considering the issues with respect to a settlement, subjective intent is at least an element there with respect to somebody's view of fairness of the settlement. So I think it's appropriate for us to stop right now and consider, based upon this case, where we are today. Is it appropriate for us to require, among material parties -- and we can discuss who material parties are later -- but among material parties who want to play a role in the outcome of this case, to make some sort of disclosure that is specifically designed to fetter out conflicts of interest. So we know in plan negotiations what people are trying to achieve. And Your Honor knows with respect to somebody says -- when they're saying a settlement is not fair or a piece of the relief is not fair, what their true economic interests are.

If you look at 2019, I'm not sure 2019 solves the problem. I mean, for one thing, a strict compliance of 2019 doesn't require disclosure of interest or claims against

foreign affiliates. It certainly doesn't require disclosure of anybody to say that they sit on a committee of a foreign affiliate.

So that's why we made the proposal, Your Honor, that, if the Court were amenable, we'll just dispense with 2019. We don't have a problem making the disclosures. We have a problem with the way this was brought and the implications of it. But we don't have a problem with making the disclosures. And I'm not sure 2019 is the right framework for the disclosures but we'll do it. But we should really consider the bigger process at large here.

THE COURT: Let me just break in and make sure --

MR. UZZI: Sure.

THE COURT: -- and make sure I understand what you've just said in reference to the current motion. Are you saying that the members of the ad hoc group represented by White & Case will comply with 2019 and will do so promptly? I'm not yet talking about how promptly but it needs to be very promptly consistent with Judge Gropper's Northwest decision. But that you are really questioning whether 2019, as a tool, is well suited to the circumstances of this case. And you are proposing that there be a special disclosure protocol for use in these cases. Do I understand you correctly on both points?

MR. UZZI: On all those points, yes. Absolutely, Your Honor. And we --

THE COURT: Okay. So this is, in effect, an uncontested motion, in respect of 2019.

MR. UZZI: Well, ex -- well, let me put a nuance on it then, Your Honor. This -- we say unequivocally and without constraint, we will make whatever disclosures the Court wants us to make whether by 2019 or otherwise. What we have a significant problem with is the selective enforcement of 2019.

We think we can -- it makes sense to dispense with that today and that's why we've made the proposal to the debtors. But with respect to timing, Your Honor, 2019 -- our discussions on 2019 with the debtors started after we filed our competing plan. It didn't start two years ago when we first appeared in this case. So I think the timing is at least -- there's an appearance at least of timing influencing the debtors. I'm not prepared to go far as saying that it is. But what I -- let me back up, Your Honor. I'm not prepared to accuse the debtors of wrongdoing here. I'm not saying that. I'm saying just the mere fact that we can question it, that there might be the appearance, is a problem in itself. And let me just explain a little bit more of what I mean because we've been in this case for two years. We've appeared before your court. We've worked with the debtors on many motions where we've tested their propositions. We've made suggestions to them to make changes that I think are beneficial. We've informed the Court of our positions when we thought that it

would be helpful for the Court to know there is somebody out there actually looking at this. And we even, from time to time, have filed motions in support of the debtors' relief.

But let me give you an example of -- right now -- so -- I'm just trying to streamline this a little bit, Your Honor. The debtors filed -- didn't file their 2019 motion until after we filed our motion to schedule the disclosure statement hearing. So there is at least an appearance of that being a litigation tactic. We've done other things in this case, Your Honor -- and I don't disagree with Mr. Miller with respect of the fact that, as a plan proponent, parties are entitled to know more about you. But that's a disclosure statement issue. That's a disclosure statement objection and we can deal with that with respect to the disclosure statement. With respect to the 2019 and issues that's been before this Court, we were before the Court just a couple of weeks ago with respect to the motion of the debtors to sell notes -- or rather, to buy -- purchase notes from Bankhaus. And if you recall, Your Honor, you were concerned since you are the presiding judge over both estates, how could this possibly be a good transaction for both estates. And we had a dialogue and we supported the debtors' motion in our capacity as the ad hoc group where we said we are substantially weighted towards LBHI. Just to correct the record for a second, we hold twenty billion dollars of claims across the Lehman capital structure, sixteen

billion of senior claims at LBHI. And we said to you, Your Honor, that we supported -- we thought it was a rational decision by LBHI. Nowhere was it discussed what our positions in Bankhaus might be.

Now let me assure you that we don't have conflicts of interest with respect to Bankhaus. But why wasn't that issue relevant with respect to me standing up supporting the debtors. It should have been. And in hindsight, Your Honor, I wish I would have told you that, that, you know, let me clarify what our positions are. It can't be -- it cannot be that whether somebody has to make a 2019 disclosure or some other sort of collateral or ancillary type of thing in this case rises and falls upon whether you're opposing the debtors or supporting the debtors because not only is it perhaps a litigation tactic, it goes beyond that and it infects the integrity of the process. That's why, Your Honor, we filed our objection. That's why we didn't just simply say okay. We felt it was appropriate to raise these issues for the Court.

We're prepared to make whatever disclosures the Court wants us to make, again, whether within the parameters of 2019 or not. The disclosure -- rather, the discovery procedures, you've heard about. They require disclosures. They are not designed to fetter out conflicts of interest. And the only thing we ask of Your Honor in ruling on this bilateral motion that you just take into consideration our concern with respect

to the impact on the total process.

And unless you have questions for me, Your Honor, I'm done.

THE COURT: Okay. I don't have questions. Does anyone else wish to be heard? Okay.

I've reviewed the pleadings with some care but it's also true that the 2019 disclosure issue is an issue that I have been following for some time in a manner unrelated to this particular contested matter. I believe that it is generally known by the bankruptcy specialists in the room that Rule 2019 has been reformulated as a result of a rulesmaking process and that there is a new Rule 2019 which is not yet in effect. During the course the deliberations relating to new Rule 2019, a number of parties in interest provided input and testimony including one of Mr. Uzzi's partners.

In effect, this is a subject that has a great deal of history unrelated to this case. And the issue of appropriate disclosure in bankruptcy cases large and small is a manner that has been not only recently discussed and provisionally codified but no doubt is a subject of ongoing discussion and evolution.

Notwithstanding that, the only matter which is before me is the current motion brought by the debtors relating to compliance with the current formulation of 2019. And the motion has been addressed to the one collection of creditors that has filed a competing plan of reorganization. So this is

not really a situation of selective enforcement as much as it is a case of obvious enforcement. Based upon the colloquy with Mr. Uzzi, this appears not even to be a strenuously contested motion as it relates to the enforcement of 2019 as much as it is an argument brought on behalf of the ad hoc committee, perhaps as a friend of the process, to obtain what amounts to Lehman-specific disclosure. That is not at the moment a motion that I need to address. And whether or not such a motion will ever be filed either by the ad hoc committee or any other party in interest remains to be seen. I note that there are some disclosures that will be required as part of the discovery protocol that will later be a subject of today's hearing. But that, too, has nothing to do with my decision on this particular motion.

The motion is granted. And I believe that compliance should be as prompt as practicable. I think it would be reasonable for this to occur within the next week to ten days. And I'm not imposing a deadline but believe that that would be a reasonable period of time for compliance. If for cause shown there's more time needed, we can always address that.

In effect, 2019, in its present formulation, is a blunt instrument which necessarily is selectively enforced because, for reasons that I noted in colloquy with Mr. Miller, more often than not, a motion seeking compliance with 2019 arises in the context of some contested matter where one party

is seeking some procedural advantage. That having been said, I subscribe to the Northwest view and agree with my colleague, Judge Gropper. I have reviewed Judge Sontchi's decision and I have considered it. I believe that even if Judge Sontchi's decision were to be reviewed in the context of the pending motion that this is a distinguishable circumstance principally because, regardless of nomenclature, the ad hoc group of Lehman Brothers creditors for the past two years has purported to act not only for itself but as a voice of similarly situated creditors in the case. I further believe that all of the pleadings that have been filed, many of which have been useful to the Court, have been filed purposefully with a view toward influencing the outcome of the bankruptcy case. It's obvious that this group continues to do just that.

And so, whether or not, strictly speaking, there are fiduciary duties here, there are duties to act responsibly. And one of those responsible acts will be full compliance of 2019.

MR. MILLER: We will submit an order, Your Honor.

Your Honor, number 6 on the agenda is a procedural motion. And if I might, even though it's Mr. Uzzi's motion, I think we can resolve it very quickly on the basis of what's happened over the past few days. The motion essentially was to put the ad hoc committee -- excuse me -- group's -- Freudian --

THE COURT: It doesn't matter what we call them now.

MR. MILLER: -- on the same timeline as scheduled for disclosure and plan prosecution as the debtors' disclosure statement and plan. The debtors' disclosure statement hearing under Section 1125 is scheduled for June 28th. And the intent of the motion was to get on that schedule. Over the weekend and during Monday -- the early part of this week, there were various discussions. And Your Honor will note that there are many, many pleadings that have been filed in connection with this motion, primarily as a result of the response which the debtors put in which talked about sequencing the consideration of plans. Everybody's rights are reserved in that respect, Your Honor. And the resolution is anybody who wants to file a proposed disclosure statement and a plan can calendar it for that day or whatever day it turns out to be all without prejudice to the rights of all parties as to opposition objections, defenses, et cetera. And an order to that effect, Your Honor, will be submitted.

THE COURT: That's fine.

MR. MILLER: Silence reigns, Your Honor.

THE COURT: That's great. Okay.

MR. MILLER: That takes us, Your Honor, to item 7 which is consideration of the discovery protocol. As the cases start in, Your Honor, I'd like to set the scene for this protocol.

On March 15, the debtors filed a proposed Chapter 11

plan and it was amended on April 15. The objective was to set an environment for negotiations which, because of the complexity of the cases and the time constraints, could not have been accomplished within the eighteen-month period preceding March 15, 2010. From the very beginning of the plan process, there has been one significant issue that has permeated all plan discussions and debates and that is whether it would be proper to apply the equitable remedy of substantive consolidation to the twenty-three debtors and the nondebtor affiliates and subsidiaries.

In the first half of 2009, in addition to the UCC, as we've just discussed, an ad hoc group of LBHI creditors was formed and became quite active. In the latter part of 2010, the ad hoc group began to press for discovery with respect to the debtors' plan and the implementation of its objectives. In December of 2010, the ad hoc group filed an alternative plan predicated, as we read it, Your Honor, on substantive consolidation of essentially all the debtors. On January 25, 2011, the debtors filed their first amended Chapter 11 plan and proposed disclosure statement.

After that event, the discovery discussions among the debtors, the unsecured creditors' committee and the ad hoc group accelerated. The Court suggested that efforts be made to develop a protocol to facilitate and discipline discovery as to plan issues. As a result, the debtors, the creditors'

committee and the representatives of the ad hoc group met and conferred over an extended period of time to develop a discovery protocol. The proposed protocol that is attached to the debtors' motion dated March 8, 2011 is the product of those activities. The return date of the motion was deliberately selected to give sufficient time for other parties in interest to comment on the discovery protocol. Since the filing of the motion, there have been extensive broad ranging discussions with multiple parties and groups who had indicated opposition, objections and various comments concerning the protocol. There have been two large broadly based meetings within the past thirty days and numerous revisions have been made to the original proposal to incorporate many of the comments made by participating parties in interest.

As a consequence of such conferences and exchange of comments, which necessitated extending the objection date to the debtors' motion, a very extensively revised proposed protocol is being proposed. Indeed, the last revisions were made almost thirty minutes ago.

By reason of these conferences and meetings, the debtors believe that they have substantially reduced the number of objections that might have been filed to the motion and have achieved, with the cooperation and the good faith efforts of all participants, what we propose is a fair, reasonable and evenly balanced discovery protocol that will expedite discovery

and effectively limit the cost of such discovery.

However, there may remain some objections. These objections are described, in part, in the chart which was attached to the debtors' omnibus reply. And even that chart, Your Honor, is no longer accurate as my partner, Ms. Singer, will describe to the Court. In dealing with the specific objections, Your Honor, my partner, Randi Singer, will address the motion.

MS. SINGER: Your Honor, Randi Singer of Weil Gotshal for the debtors. As Mr. Miller expressed, this has really been quite the process. The Court made it very clear that the parties were expected to work together and I'm very pleased to report that the parties -- all of the interested parties have in fact worked together and it's been a really incredible process. I want to thank and express my appreciation to many of the people in the courtroom today who have helped ensure that our discussions were truly productive. People took time to understand each other's positions and everybody was really willing to keep at it through midnight last night up until just before we started proceedings this morning.

And there's been lots of different drafts; lots of comments have gone back and forth. I have confirmation that -- a formal confirmation that several of the objections have been withdrawn. I think that there may be other objections that have been withdrawn in whole or in part. So I would propose to

go through at a very high level what we think the objections are and then we can see what's left and -- what the debtors' position is and what we think is no longer an issue.

THE COURT: That's fine. It might be helpful not only to me but to the parties who are in the courtroom who may be interested in this subject but who are not directly involved in the most recent changes to know what the current arrangement is by focusing on what has changed and by also identifying what categories of objections may have been resolved or satisfied by virtue of those changes.

MS. SINGER: Certainly. I think Your Honor anticipated my next question which was do you want me to go through the structure a little bit at a high level of the current version of the --

THE COURT: Well, I'm familiar with what --

MS. SINGER: Okay.

THE COURT: -- in the past was a changing landscape but one that was changing in the direction of a accommodating objectors. And I have reviewed your chart and I have reviewed your omnibus reply to objections and I have reviewed all of the objections. I just want to know what's pertinent for today.

MS. SINGER: Okay. Well, then I think, at the outset, there's several objections that I would characterize as outliers. And I think that those objections actually typify why it is we need a collective process. One is the limited

objection of Giant Stadium LLC and their renewed limited objection. They're simply contending that plan discovery at all is totally premature and shouldn't start yet. In our opinion, this doesn't really doesn't even rise to the level of the tail wagging the dog. I think the point here is that there really needs to be common procedures, common deadlines, because otherwise people can come in and have the ability to step in at any point and completely demand special treatment and bring the entire process to a complete stop. I believe that objection is still outstanding.

And there's a number of folks that have joined in the objection that it's too early to start plan discovery. Plan discovery is going to be very complex. A lot of these deadlines are very aggressive. But they've been worked out with a lot of creditors. We think they're realistic. We think we should get started sooner rather than later so that we can -- the sooner we start, the sooner we can finish. And there's mechanisms built in to the protocol that if things need to slip, there's a setup that that can happen. There's pretrial conferences. There's various status conferences. There's lots of meet and confers. And it's arranged so that if these deadlines do turn out to be problematic, we can address that as we go forward.

I think the second objection that I would characterize as an outlier is the objection of State Street Bank and Trust

Company, docket number 15613. They're essentially contending that it's too expensive and too impossible for everybody to work together. I think all of the negotiations leading up to this proceeding have proven that wrong. There's been a very cooperative process doing that. And the fact that I'm standing here today with the objections as limited as they are I think is proof.

Their proposal is essentially that we form a whole bunch more -- I don't know whether to call them ad hoc groups or ad hoc committees or additional groups, whatever they are. And these committees would be the proxy and they would all engage in discovery and the estate would pay for everything. This seems to me to be problematic on a number of levels. It's not efficient. It's very burdensome. It's very expensive. And, frankly, if the estate is paying for it, nobody would have any incentive to do anything except engage in years and years of discovery at the expense of the estate.

In addition to sort of that different approach, State Street also joined a number of the common objections that were set forth in our omnibus reply. And we can go through those very quickly and I'll give you my best guess as to what the status of them is today.

The first was Objection A1 which was the proposed order provides the debtors with an unfair advantage. And to this objection, we just think that this was a misinterpretation

of the order. We think that this is a very even-handed -- it might have been in -- the early stages of the early drafts of the order might have been legitimate. But at this point, all of the changes in the process have made this a very even-handed order. In fact, the debtors think in some places it goes too far because I don't think there can really be any dispute that the debtors aren't -- that the vast burden of this isn't going to fall on the debtors.

To the best of my knowledge, that's still an active objection but I don't -- short of starting over again, I'm not sure what changes could be made to address that. We think it's very even-handed.

The objection A2, that the debtor should not have a coordinating role, I think, misunderstands what the role of the designated parties is. The designated party is really designed to be a ministerial role. It's designed to be somebody who puts forth the initial set of -- draft the initial set of document requests or 30(b)(6) topics or whatever it is. They get circulated to the group. Nobody is bound by them. Everybody can add whatever it is they want. The list -- there's specific provisions in here that say the designated party cannot refuse to accept anybody's additions. There's language that says nobody's prejudiced by other people's additions. And the final document request or 30(b)(6) notice that goes to the party will say next to it whose request it is

or who put that topic on the list so that the receiving party will know who they should go negotiate with. The designated party is not the agent that you go negotiate your objections to request with. You go directly to the parties who made it. All the designated party is trying to do is ensure that everybody faces and it's the debtors, it's the alternative plan proponents, it's participants, it's whosever working, gets one document request or one 30(b)(6) notice. It may be a very long one. It may have hundreds of requests, whatever it has on it. But it'll ensure that it's not -- they're not getting ten or a hundred different requests that all have exactly the same request but phrased a little differently. It's really just a streamlining.

For discovery on the debtors, it will be -- that role will be served by some participants. We'll get to this in a second. For various participants, if the debtor plans to take discovery, it makes sense that that debtor would take that role. But again, that would not prejudice anybody's rights or abilities to make requests throughout the process.

State Street and Libertyview, to the best of my knowledge, have interposed that objection. I don't know where that stands today.

There have been several objections that the requirement that people file a notice of intent to begin to participate as unfair because the debtors or the creditors'

committee have the opportunity to object to that. It's meant to be very ministerial. In the last version -- and actually, Your Honor, if I may, hand up the copies that were as of an hour before we started -- may I approach?

THE COURT: Oh yes. Thank you.

MS. SINGER: And my colleague, Jamie Kaplan, has a few extra copies if people would like.

This was a change -- it's not -- it wouldn't be redlined in that draft 'cause it was a change that was made in the version that was filed on Monday. But what we've done is add a line to the notice of intent so that people can tell us what group they want to be in. So we figured that will make it very easy. To the extent people are objecting that we have the ability to object, obviously, the objections would go to Your Honor so nobody is prejudiced. It wouldn't be solely within the control of the debtor who gets to participate. It's really meant to just make sure that we know who's in there and we know what their interests are.

The objection B1 is that there's no procedures for selecting the designated party. It's ironic that some people are complaining the debtors have too much ability to control and other people are upset or sometimes some of the same people are upset with them because we didn't put procedures in place for us to choose who the designated party is. We respectfully suggest that it's not really the place of the debtors to

appoint the party that's going to be coordinating discovery on the debtors. We think -- we feel certain that all of the highly sophisticated and experienced attorneys who represent the participants will be able to get together a designated party.

I believe those objections are still outstanding. We have not taken any of the proposed language changes that put in place balloting procedures or any of that for how to pick the designated party.

B2 is similar. There's no procedures explaining how people should mobilize. This is the additional language we've added. The notice of intent -- you tell us what group you're in. We're going to circulate a service list once we get all the notices of intent. Everybody'll know who's in your group. You'll have their e-mail address, you'll have their contact information. And we're pretty sure that everybody will be able to reach out and coordinate amongst themselves. Again, we don't think it's appropriate to impose procedures on people for how they get together and coordinate.

C1 and C2 relate to paragraph 3(j). Paragraph 3(j) -- there's no language changes from what was filed on Monday. But what was filed on Monday did contain some language changes. 3(j) involves -- takes the several categories of documents that are virtually certain to contain -- at least the majority be privileged documents. There's more than a hundred in-house

lawyers at Lehman. There were lots and lots of outside counsel. The idea was it's virtually certain that these are going to be mostly privileged documents. To the extent that these lawyers are communicating with business folks, those e-mails, those communications, are going to come up when we search the files of the business folks. All we were trying to do is sort of ex-ante save some of the burden. I mean, with the examiner's request, the numbers I've heard involve forty or fifty attorneys working full time for more than a year to do the privileged log. And that was without even searching the files of lawyers. We're really just trying to save burden and expense here.

It was originally this was only the debtors didn't have to search these categories. After extensive negotiations, the version on Monday made it mutual so that all participants can enjoy this exemption and this burden saving. I believe that most of the objections have now been withdrawn because we have made this mutual.

The one outstanding objection that I am aware of, which may or may not still be the case, there's several creditors who have objected to the fact that they think there are certain communications involving counsel that will not be privileged or that they are entitled to get a privileged log on. The way we've addressed that is there's language in there that says if it's a reasonably targeted request or if you go to

the court and Your Honor so orders, we'll make exceptions. We'll look at things. If you tell us specifically what it is you want, we will go look for those specific documents. But we can do that without necessarily searching all of it. The other concession that we have made is if somebody is going to be a witness, if we know somebody falls into one of these categories but we're pretty sure they're going to be a witness at the confirmation hearing, obviously, we will make an exception there as well. So to the extent people are trying to build additional -- pre-negotiate other exceptions in, we think that's inappropriate at this point. There's plenty of mechanisms. There's a lot of flexibility built in here to take it on a case by case basis. And we think -- you know, privileges, as the Court knows, is a very, very nuanced analysis and we think it's inappropriate to ask the Court for an advisory opinion at this stage on what may or may not be privileged. We think there's enough built in here that it should be taken as it comes.

Similarly, objection C3, that it should be clarified to ensure there's no limitation on fact discovery from Alvarez & Marsal, our advisors, we believe has been taken care of with the language that says if somebody is going to be a witness, their documents will be produced or if there are specific things that you want, we'll produce those documents as well.

Objection C4 I believe is moot. It has not been

formally withdrawn by certain objectors but I believe it is or it should be because it was asking that debtors provide a privilege log. Original versions of this tried to recognize that the extreme burden that was going to be inherent in the debtors producing a privileged log -- we fought the good fight but I think the debtors, in the last version that was filed on Monday, the debtors have agreed that they will do a limited privileged log using the categories that can be automatically populated by the software -- was the exception and that would apply to everybody. And with that change, I believe those objections should be either mooted or withdrawn.

Objection D1 is the objections to the former paragraph 12 of the protective order. This came out in the Monday version. Originally -- I think there's no dispute that there's certain asset level evaluation information, how the debtors are valuing certain assets in the estate that is highly competitively -- very, very sensitive information. Giving out information about how the estate is valuing things is obviously going to have an adverse impact on how the estate is able to maximize its assets. So originally, there was an outright ban. It was built into the protective order that the debtors refused to provide any such information. There's been a lot of negotiations around this and the current version of this is found in paragraph 19 of the protective order. And what that holds is that calls this specific information restricted

information. It makes it clear that there may be situations where it is appropriate to provide such information. If in fact, it is appropriate, there should -- recognizes that there should be some additional restrictions put on it. It shouldn't be loaded up to the database available to anybody. But it leaves a lot of flexibility in terms of exactly what those restrictions are going to be.

So what we think we've done here is built in the necessary flexibility but we've compromised and there's no longer an outright ban. Several creditors have withdrawn their objection based on this new paragraph 19. And we think that that should take care of all of those objections.

Objection E1, that goes to the blackline. That is the first language that's actually different today. And this goes to paragraph 1(b). The issue here is there's a recognition that we should do plan discovery once, that doing the electronic searches, doing depositions, doing document production, this is going to be a tremendous burden on everybody involved. So the plan is to try to do this in an efficient manner so that we don't take all of the assets of the estate and spend it on e-discovery. We've balanced that by recognizing that there are certain creditors who may have certain individual claims that they don't necessarily want to get involved in plan discovery but they need to reserve their rights.

We've gone back and forth on language on this because, at the same time, this needs to not be the exception that swallows the rule. The proposed language that is in the blackline today is the latest compromise that we've proposed. I believe that that has been accepted by most of the objectors but I'm sure they will tell if I am wrong.

F1 is the discovery deadlines are too short. Again, we think that this -- we haven't changed anything in response to that. They're admittedly aggressive but a lot of people have gotten together to help establish them and we think they should be adhered to.

A lot of folks, F2, were upset that there weren't enough interrogatories. We had originally said twenty-five interrogatories. No contention interrogatories. Twenty-five on each participant. That was loudly and soundly booed by pretty much everybody. The latest version gives ten to each group plus to the creditors' committee and the U.S. trustee. Hopefully, that will address people's concerns. But it's worth noting that we have eliminated contention interrogatories here.

Similarly, F3, we've eliminated requests for admissions. My partner, Irwin Warren, refers to those as generating a whole lot of heat but no light whatsoever. We think in a proceeding like this, it's really unduly burdensome to start getting into requests for admissions. We're not going to admit that sub-con is appropriate. They're not going to be

useful.

As of last night, there was still a handful of individual objections. Oh. The other large issue is 11(c) which is reflected in the language that I've handed up. 11(c) is meant to be a carve-out. It's reflective of 3(j). It essentially says that anybody who's in bankruptcy, you don't have to search these categories of likely to be privileged documents post-filing. There was some concern that 3(j) and 11(c) as it was before the version I just handed you were inconsistent. It wasn't clear what trumped what. The language has been changed to just make them entirely consistent. What 11(c) adds that 3(j) doesn't have is nonparticipants who are in bankruptcy or in some sort of liquidation proceedings can also take advantage of that.

I believe that you will also hear from the United States trustee, we have taken -- in this blackline, there are several places where the U.S. trustee has also asked us to clarify that the U.S. trustee was its own group, it could submit its own document request. It could submit its own deposition requests. We have tried to take that language wherever possible -- last night, it was pointed out to me that we've missed a couple of places. So in this blackline, we've added it to the couple of places that we've missed.

The open issue with the U.S. trustee is that the U.S. trustee has made a request that five days before anything that

we propose to file under seal, we give it to the U.S. trustee so that the U.S. trustee's office can evaluate and object to anything that we propose to file under seal. We would just submit that that's impractical and unworkable here. If we had -- there's nothing under seal here but if we had to give this five days ago, it wouldn't have borne any resemblance to what we're dealing with today. There's mechanisms that the U.S. trustee will have access to all documents that are marked "Confidential" or "Attorneys Eyes Only". There's mechanisms to object to them at the time they're so marked or at some point later in the process. But having to know what you're going to do five days before you do it is, really, in a proceeding like this, I think just unworkable. We have not seen any precedent that we could model anything off of for such a provision. And so we have not accepted that language.

There are several folks who wanted to be their own group. We have not taken that language either. The groups we put together with the help of a lot of different creditors. We think they're fair. At some point, if everybody becomes their own group, you start to lose the efficiency. So we've not taken that language.

There is some -- there's language in here at the request of Barclays and at the request of the SIPA trustee that say to the extent either Barclays or the SIPA trustee has additional -- has the same documents or there's some overlap,

let's be efficient. Go to the debtors. Ask the debtors for all the documents. The debtors will provide all the document production here. We have had -- there's objections that think that people should be able to also go to the SIPA trustee separately. We've not accepted that language. We think it's most efficient for everyone just to come to the debtors. And if we don't have something, the debtors will figure out efficiently how to get it. You may hear those objections. The SIPA trustee filed a statement against those objections. It's not really my fight to have here. We think it should be -- everybody should come once to the debtors.

There's also some objections to subsequent discovery. The idea here is that if you don't file your notice of intent or if you file it later or something else is filed or you file an objection or -- basically, the point is if you join discovery at some point, you are joining the regularly scheduled program already in progress. You can't restart deadlines. Just because you file an objection to a plan, if you could have filed it today, the fact that you choose to file it six months from now does not give you the ability to restart everything. So there's language in paragraph 8 and paragraph 15 that clarify if something subsequent happens, you can -- paragraph 8 is on page 30 and paragraph 15 is on page 49. If somebody files a new plan or if there's additional issues or if you're in a deposition and somebody mentions a document that

you think you should have gotten, there's provisions to get those specific things. The ad hoc group and several others have objected that -- some have objected it's too broad; some have objected it's too narrow. We haven't touched the language because we think it accomplishes what it needs to do.

And there were several other objections that I think were based on earlier versions of the -- that were objecting not to the most recent version that make reference to things in old drafts. So we think all of those are mooted.

And that's my best guess of where we are as we sit here today.

THE COURT: Well, we'll soon find out if you guessed right. I'm a little concerned about the comfort of the crowd. And there a number of people who are still standing and have been since before 10:00. And at some point, I think, we're going to want to take a break and figure out how we're going to stage hearing the various objectors as we approach the lunch hour.

One of the things I'd like to do before taking the break is to find out from those who are here how many people wish to speak. And ordinarily, I would say, well, just please stand up. But that doesn't work. So if those who have continuing objections or a need to address some reservation of rights with respect to the current form of the discovery order would simply identify themselves so I have some sense of the

number of people we're talking about in light of where we are right now -- and then I also have a question which is whether or not people are even equipped to do that because I don't know how many people have had a chance to review what you just handed up to me. So I'm just going to start by asking who thinks they want to object? One, two -- okay. Hands. One, two, three, four, five, six, seven, eight, nine. Okay. Of the nine -- ten.

UNIDENTIFIED SPEAKER: Your Honor, if I may, I would like to speak briefly to the Court, though, to the proposed order.

THE COURT: Okay. And I'm sure we'll hear from the committee. So that's eleven. If we assume that everybody is only five minutes and we round up, that's an hour. I'm assuming some people may be longer than that. So we maybe have an hour and a half. I'm not limiting; I'm just trying to estimate. Of the eleven other than those who are supporters, how many view themselves as a distinct group as opposed to being -- okay. One, two, three, four -- all right. By that, I meant, some of you may be saying the same things. And I'm assuming that you've spoken to each other and have some sense as to what's going on within your assembled multitude.

Okay. I have a 2:00 calendar of adversary proceedings. There is one motion to dismiss and there's one simple pretrial conference although it may not be simple. I'm

also conscious of the fact that in order to give this a fair hearing, it may be that we're not going to finish by 2. I just recognize that possibility. So let's do the following. Those who are not interested in this subject may just feel stuck in the middle of a row and feel awkward about getting up and leaving. So let's take a ten minute break. You can take a drink of water and refresh yourselves, come back at about ten to 12. Those who want to leave, that's fine. Those who have an ongoing interest in the subject matter will resume at ten of and we'll go till 1:00 and then take a lunch break and then consider what happens next.

MS. SINGER: Thank you, Your Honor.

THE COURT: We're adjourned for ten minutes.

THE CLERK: All rise.

(Recess from 11:43 a.m. until 11:57 a.m.)

THE COURT: Be seated, please. I think we'll just take the objections in turn.

MR. WILLETT: Good morning, Your Honor. Sabin Willett of Bingham McCutchen appearing for State Street Bank and Trust Company. I'd like to begin with a statement of our objective, and then proceed to a concession. The objective is consistent with what Mr. Miller said. We need -- this is all about substantive consolidation. And the discovery we care about is that which is going to educate us about that subject. There's other things, but they're details.

THE COURT: Do you have a point of view with respect to that subject right now?

MR. WILLETT: I do indeed, Your Honor. I don't think that it's permissible in this case. Or --

THE COURT: So you'll be looking for discovery that supports that position?

MR. WILLETT: Right. But if it turns out there was contrary discovery, we'd like to know about it early enough to make an intelligent change of view. We don't think we'll find that.

We started out by looking at this process, which is unlike most litigation processes. We don’t stand at the starting gate together. The debtors are way ahead of us. They have one of the finest financial advisors in the world which has spent 400 million dollars looking under every rock and understanding every financial detail of these debtors, and doing a superb job at it. But that's -- that work has been done, and it's not currently available to us, except in limited public ways.

And we thought, the only way that we'll have a chance against these well-financed, estate-financed, adversaries is to come up with our own committee. But I have to concede that I feel a little bit like Colonel Lawrence on Little Round Top waiting for the reinforcements that have not come. You can't have a committee of one. And the many creditors who are

situated as we are, which is to say a claim against an opco or a guaranty claim parent, they're not also advocating that result. So I think that I have to say that it's just not going to work to set up even one ad hoc committee.

I regret that. I think it would have actually been cheaper and more efficient. In fact, the complicated process that Ms. Singer described might have been simpler if there were one voice for many of us. But it's not going to happen.

So coming back to our primary objective, which is how do we discover efficiently and quickly the facts pro and con consolidation, it seems to me -- and this is going to drive really just a couple of points on the order. The answer is, we need to know what Alvarez & Marsal knows. That's the quickest and most efficient way to get it. We don't care about their advice. We don't care about the lawyers' advice. But we do need to know the facts. And they know the facts. In fact, we're quite confident of that, because their plan says we know the facts, we've looked at the facts, we have assessed them and we've come up with a compromise.

And this informs what may have seemed to Your Honor as a trivial objection, which is the one to the interrogatories. I'm a litigator by trade. I regard interrogatories as the least useful tool in the bag, usually. But this case is different. I'd like to send them an interrogatory that says, I want an answer that shows me every fact, pro and con,

entanglement of these finances known to Alvarez and an identification of the documents that support it.

I suspect they would call those contention interrogatories, but I think that would be the swiftest way to put facts on the table that we can then argue about later. Right now the order doesn't permit that. But with a change to paragraph 12(a)(1), deleting the limitation of "no contention interrogatories" and also deleting the language that tracks Local Rule 7033-1(a), we could get there.

Your Honor can do that under Local Rule subsection (b). You could permit us to take this kind of discovery by interrogatory. So that's the first technical objection to the order: can we strike that language from paragraph 12(a)(1).

THE COURT: I'm sorry, what language in particular do you want to have stricken?

MR. WILLETT: I'm on -- in my draft it's page 33, Your Honor. It's paragraph 12, headed "Interrogatories".

THE COURT: I'm looking at it.

MR. WILLETT: Okay. And in there it says, about five lines down, "Interrogatories to the debtors shall be limited to identification of witnesses and authentication of documents." We would strike that. And it goes on to say, "and shall not include contention interrogatories." So we would simply propose to strike that sentence.

THE COURT: And you want to strike that sentence so

that you can ask an interrogatory that will give you all the information known to Alvarez & Marsal with respect to substantive consolidation issues. That's impossible.

MR. WILLETT: Well, Your Honor, we have to be more precise in framing an interrogatory. But, for example, one of the things that it is their burden to show, is a hopeless entanglement of the finances. They have said in the plan that they have analyzed facts on that, pro and con, and that that drives the compromise in their plan. We want to know what those facts are; what they precisely are, not simply as they're broadly described in the disclosure statement; what evidence you would hear at a trial of that matter.

And I can imagine half a dozen interrogatories framed in that way to give us the information that is known to Alvarez, precisely on that point.

The alternative, which is what we now have in the form, is we're going to have to look through ten million documents, we who don't have an estate-funded representative, and recreate what they've observed. So that's what informs that request.

Related -- if I can move on to the next one, Your Honor, it's related in object, although it's a different subject. And this one is subsection 11(c)(vi). It's also 3(j). And it goes to the extent of discovery from Alvarez. Right now -- I'm on 11(c)(vi) which is page 33 -- right now we

can't get any internal documents of the advisor. That's where this information is going to be. They're going to have memos or e-mails or other communications that describe what they have found that's either suggestive of entanglement or suggestive of transparency. And that's -- they can redact out the advice. We don't care about that. We just want to get to the facts that they have unearthed in their work.

So we have suggested that the order delete 11(c)(vi) and similarly, the parallel language that Ms. Singer described, which I think is in 3(j), relating to the scope of discovery.

THE COURT: I don't understand what you just told me.

MR. WILLETT: Okay.

THE COURT: Why is it you don't find 11(c)(vi) to be workable right now?

MR. WILLETT: Because the internal documents within the advisor, in this case, Alvarez, that's where this responsive information will be.

THE COURT: Well, this is of a witness. "provided, however, in the event that a representative of any advisor is disclosed to be an anticipated witness at the plan confirmation hearing, such individual's documents shall be subject to discovery," blah, blah. What's wrong with that?

MR. WILLETT: I don't know whether they'll call any Alvarez witnesses or which ones they would call.

THE COURT: Well, they do have a burden as plan

proponent to put on a case that supports their plan. And presumably they'll do that with someone who is speaking English.

MR. WILLETT: I'm sure they would, Your Honor. But --

THE COURT: I don't know who the witnesses are going to be, but they'll be somebody, presumably that -- whether an Alvarez & Marsal employee or an employee of some other estate representative or advisor would say, I've studied the following and a truck comes in with documents that have been analyzed. And presumably there's some testimony and an opportunity to cross-examine.

MR. WILLETT: But we're going to start with document production. They don't designate their witnesses until later. So we don't know who the witnesses are. We can't get at this material. The simple point I'm trying to make is that we believe this material exists, that they know, because they've said in their disclosure statement --

THE COURT: But this paragraph deals with privilege.

MR. WILLETT: Well, I'm not sure that it is, at (vi) "internal documents and communications of the advisor." I'm not sure why that's privileged. And we're just trying to get at the source where the relevant facts would be. We think that's where it will be. Otherwise, we're just going to go on a hunt through ten million documents, trying to recreate what they've already done.

3(j) follows the same -- it's the same issue. It relates to the post-petition -- it would cut off, as I understand it, inquiry into post-petition matters. But again, it's all going to be post-petition. That's when they did their work -- or, I imagine substantially all of it.

I have a couple more points on the order, Your Honor. The next one's at paragraph 16, which has to do with experts. And this may simply be a point of clarification. I just want to be sure that experts -- and that's 16(b) on page 50. Experts who are resisting consolidation, I want to clarify, are indeed rebuttal experts, since it's the debtors' -- the plan proponents' burden to make a claim for consolidation. We'd like to know what it is they're saying before we have to respond to it.

If -- it's not clear from this order, but if that is indeed the intention, there's no problem.

THE COURT: I didn't get what you just said.

MR. WILLETT: Okay.

THE COURT: We're in paragraph 16(b), rebuttal experts. It says, "Participants shall identify and serve all disclosures regarding rebuttal experts, including rebuttal expert reports, no later than thirty days after the service of initial expert disclosures."

MR. WILLETT: Yes. What I'm --

THE COURT: What's the problem with that?

MR. WILLETT: There's no problem with that, if it's clear that experts who speak in opposition to consolidation are rebuttal experts and within that paragraph, as opposed to (a), which is a simultaneous disclosure of expert disclosures.

Typically, the way it works is the party with the burden discloses its expert view first so that the party without the burden can respond. That's what we're trying to accomplish there.

THE COURT: I'm not getting what change you're looking for.

MR. WILLETT: I'm looking for a clarification that experts who speak in opposition to consolidation will be deemed to be rebuttal experts for the purposes of this order.

THE COURT: I think that they're just rebuttal experts. That's what -- I'm just reading the words. I hear your point, but I'm not truly understanding it.

MR. WILLETT: Okay, it may be simple -- maybe the debtors' can clarify that that's their intent. If it's not their intent, then we have a problem. If they would say no, your experts, whatever they might opine to, they're not rebuttal experts, they have to go when ours go.

THE COURT: I'm assuming that whatever is in this document, and it's a long document, that parties have spent a lot of time drafting, revising, evaluating, and objecting to, is a document that's a best effort attempt to deal with a very

difficult problem, and may not be perfect, despite those best efforts. To the extent that there is a disagreement concerning language of the order, ultimately, I'll be the person to interpret it, or somebody like me.

And this is all going to be construed consistent with the fundamental premise of the Federal Rules of Civil Procedure to achieve fairness and efficiency and to avoid prejudice. So I don't see how this can be a problem for you.

MR. WILLETT: Your Honor, it sounds like we're reading the order the same way, in which case it won't be any problem. There's just some ambiguity in the way it's drafted. There are a couple of other small points in the order, one of which I think I heard Ms. Singer to clarify in a way that avoids a problem, and that's the treatment of Barclays, which appears in Section 3(L) of my draft.

My understanding is that this is not designed to cut off discovery from Barclays, but that the discovery has to be, in effect, routed through the debtors. And we have no interest in Barclays unless it turns out that they're a repository for information that's relevant to consolidation. That would be the only relevance.

If there's no limitation on the ability to ultimately get that material, if we can't get it through the debtors, then that shouldn't be a problem. But I wanted to flag for Your Honor, there shouldn't be some sort of shield around Barclays

if it turns out that they are a repository of information relevant to consolidation.

There's also on the privilege logs, which is 11(a). It's not quite there, because they don't disclose to/from and cc, so you can't tell whether you have the basis for privilege in the fields that that they would disclose. It's on page 32. But if they were to add "to/from" and "cc", that would be fine. And that's all I have, Your Honor.

THE COURT: Okay. I'm going to make a comment before hearing from the U.S. Trustee. But it's just going to be a brief comment.

I have a sense, based upon not only what I have reviewed but the comments of counsel, both counsel for the debtor seeking to characterize the objections, and now having heard from Mr. Willett -- and I don't mean to say that all of the other objections will be like that -- that it may not be possible, in one document today, to satisfy everybody. And I'm conscious of the fact that this order is, in effect, making modifications to discovery rules that have stood the test of time in civil litigation for decades.

But they're designed to deal with a very real problem. And I believe that everybody, including the objectors, recognizes that this is a problem of case management that may be uniquely complicated, given the number of parties who are involved, the complexity of the assets and businesses that

we're talking about, and the enormous stakes in terms of outcome. And as I hear these objections, I want you to know that I'm going to be balancing the particularized needs of individual objectors, as against the common good, which is managing a difficult case on a timeframe that ultimately works to everybody's advantage by getting us to the finish line in a fair and efficient way. So I just wanted to say that, so that as you're making your objections you recognize that I'm listening, but you may not all get what you want. In fact, there's a good chance you won't.

Go ahead.

MS. SCHWARTZ: Good afternoon, Your Honor. Andrea Schwartz for the United States Trustee. We're certainly mindful of Your Honor's comments just now and earlier, and also as we stated in our papers, the United States Trustee is in favor of the establishment and implementation of discovery procedures in connection with plan discovery, with the positive goal toward effectuating an efficient and expeditious and streamlined process for all the parties within the court's jurisdiction and within the parameters of the Bankruptcy Code.

On April 6th, the United States Trustee filed a response to the then second iteration of the discovery procedures, which, as Your Honor commented and debtors' counsel has commented, was an extensively revised version. We had had two prior discussions with debtors' counsel, where they

listened to our comments, incorporated many of them, some of which were incorporated, some of which were not. But it was clear that their effort was to try to incorporate as many comments from us and, it appears, from the other interested parties as well.

In our response we set forth three areas of concern. One was that the United States Trustee should be able to fully participate in all aspects of discovery. It wasn't clear to us, but it did appear to us, that given that this is such a complicated procedures mechanism, that it was probably more likely than not that the debtors had omitted the United States Trustee or it was a scrivener's error where we hadn't been included.

Subsequent to that time, we have had conversations and e-mail communications with debtors' counsel. The revised document that Your Honor got today contains many of those. In fact, when Ms. Singer was referring to the twelve o'clock call last night, it might have been me. But we had one more change to that which they've already agreed to put in. So we're comfortable that the U.S. Trustee can participate fully, and we very much appreciate debtors working with us in that regard.

The second issue that we raised, Your Honor, was with regard to the United States Trustee's obligations for disclosure under 586 of Title 28, the Freedom of Information Act, the Privacy Act and any other applicable law, as well as

disclosing information that's discovered for purposes of civil and criminal law enforcement purposes.

We spoke with debtors' counsel about that. At paragraph 23 of the protective order, there is a provision that includes some language relating to the United States Trustee's ability to make those disclosures, consistent with her statutory duties as well as federal law. If Your Honor reads, in the middle of that paragraph, it does read, "Nothing herein shall prevent the UST from disclosing information designated as confidential or attorneys'-eyes-only for civil and criminal law enforcement purposes or in compliance with a subpoena or court order." Then it reads, "To the extent confidential information," and we suggest that there might be just a typographical error there -- they should include the words "or attorneys'-eyes-only information" -- "is sought pursuant to any request made under the Freedom of Information Act or applicable law, prior to that disclosure, the U.S. Trustee will notify the party," and they'll have an opportunity to take whatever measures that they may need to take.

That's okay. That works for us. We think that language should also be in the discovery procedures order. What the discovery procedures order contains is just a reference to paragraph 23 of the protective order. The problem is this, Judge. Oftentimes these discovery orders get separated from the protective orders, and the issue here is

notice. All parties should be on notice that information that comes to the United States Trustee is subject to these disclosures. We don't think that simply a reference to the paragraph in the protective order is sufficient, and we would propose that this language also be included in the discovery order.

The bigger issue here, though, Your Honor, is that the protective order and the discovery procedures order, seek to limit the use of that information. If Your Honor looks at paragraph 1 of the procedures order, subparagraph (a), it reads, "All plan discovery sought must be sought in connection with the plan issues only, and no discovery nor any information contained therein may be used in connection with any other matter or proceeding."

It is our view that if the United States Trustee, under her statutory duties or other applicable law, discloses information for purposes of criminal or civil law enforcement, that those law enforcement authorities should be able to use that information, and that they shouldn't have to then go and take their own discovery to get the same information. And we would just like the order to provide as such.

We've spoken with debtors' counsel about it. They stated in response that they didn't believe there was anything in the orders that prohibited that type of use. We see it differently, and we would appreciate if those modifications

were made. And I won't take up the time with Your Honor, with all the sections where it talks about use of the material, but that's the overall concept.

The last issue, Your Honor, deals with paragraph 9 of the protective order. And Ms. Singer alluded to the United States Trustee's position with regard to what is provided for in the protective order as an automatic sealing provision. Our position, which is slightly different than Ms. Singer stated, is that the Court should not permit any automatic sealing at all, under these procedures. We believe, and as the case law in our circuit states, that under 105(a), we're certainly mindful that Your Honor has broad equitable powers. One of our leading treatises, Colliers, notes that the Court should not use its broad equitable powers to override another section of the Bankruptcy Code. That would bring us into 107, and also Rule 9018.

There's a long presumption, Your Honor, and I imagine Your Honor is very well versed on this, that records that are filed with the court should be public and they should be transparent. The Second Circuit, in Orion Pictures stated and noted that, "there is a longstanding presumption in the jurisprudence in this area that evidences the United States Congress' intent to preserve the public's right of access to judicial records in bankruptcy proceedings." That's at 21 F.3d 24 (2d Cir. 1994).

That public policy is codified in Section 107(a) of the Bankruptcy Code which states, "All papers filed in a bankruptcy case are public records and open to examination." I'm certainly mindful of 107(b), and that's where the rub comes in here with respect to the procedures.

The law of this circuit makes it clear that the burden for showing that information which falls within 107(b), that's trade secrets, confidential research, et cetera, falls on the party seeking to have that information sealed. That was somewhat recently stated by Judge Glenn in In re Food Management Group, 359 B.R. 543 (Bankr. S.D.N.Y. 2007).

To meet this burden, the Second Circuit in Orion held that, "The movant must demonstrate extraordinary circumstances and compelling need to obtain protection." Now, that's the law that governs here with respect to these procedures orders, in practice. Your Honor, prior to joining the United States Trustee's Office, I had sixteen years as a litigator. I was involved in a lot of litigation. I was involved in a lot of discovery orders and, as well, with respect to how parties go about designating documents as either confidential or attorneys'-eyes-only.

Under the procedures orders that are before Your Honor, the requirement to designate material as confidential or attorneys'-eyes-only, is a good-faith belief. Nobody doubts that anybody would have a good-faith belief, but I think it's

also fair to say that in practice, there is a tendency to overdesignate things as confidential out of an abundance of caution. That being said, that is not the same standard that has to be met when documents are sought to be sealed when they're being filed under the public record. That is not a good-faith belief. And the law is absolutely clear that only certain types of information can be -- that can qualify for sealing.

If Your Honor looks at the documents that are subject to being designated as attorneys'-eyes-only under the discovery order, or under confidential information -- and we cited this in our papers, and I know Your Honor's read that -- there's a whole host of information that would not necessarily meet the standard under 107. So our position is that there should not be an automatic sealing provision that just receives this Court's imprimatur. The burden should be on any party that's seeking to file documents where they want to seek to file information that's been designated as confidential or attorneys'-eyes-only.

As an alternative, Your Honor, and solely as an alternative, we said okay, we're trying to come up with a way. This -- as Your Honor noted -- this is a very complex case, lots of parties. You know, look, it's not just the United States Trustee. It's all parties. It's the public that has a right to see documents that don't satisfy the protections that

have been put in place by Congress. But we suggested a mechanism by which parties could provide us with those documents.

I want to say two things about that. One, counsel asked us, do you have any precedent for any other orders where discovery procedures were entered. I've only been with our office for a fairly short time. But I was able to locate, in the case of Quigley, which is a Judge Bernstein matter, where Judge Bernstein approved a stipulation and order; and very sophisticated lawyers were in that case. And that sophisticated order provides that they have to make a motion in order to get documents filed under seal.

I'm not saying that that case is on par with the Lehman Brothers case. What I'm saying is that although Your Honor has broad powers under 105, I would suggest that the Court should not use that power to override 107, and that an appropriate mechanism could be installed in these procedures so that parties seeking to file documents that have confidential information, respect the public's right to see documents that are not otherwise provided for protection under the Code. Thank you.

MR. HUEBNER: Good afternoon, Your Honor. I am Marshall Huebner of Davis Polk & Wardwell on behalf of the LBIE entities. First let me thank the debtors for their shout-out about the nature of the collaborative process. In fact, it was

a -- it is an extraordinarily good and robust process, with the creditors, in a remarkably large group; first getting all their comments into a single voice, and interacting with the debtors and receiving mature and thoughtful responses back. And so I do want to sort of give kudos, frankly, all around, in return, including frankly, to the debtors themselves.

Number two, Your Honor, I know that her slip of tongue was surely inadvertent, but Ms. Singer in her remarks, when she was talking about the groups that are contemplated under the order, said, "And if people need to they can set up additional ad hoc committees or groups." In light of the connection to the prior motion and Mr. Harvey Miller's slip of the tongue about the actual ad hoc, just to be very clear, there is no argument -- I assume she was not attempting to say -- that the unbelievably broad umbrella groups in the discovery order, which are all creditors against -- directors against LBHI, in any way constitute ad hoc groups under 2019, and that this order now gifts us eight new monster blocks of 2019 targets.

I know it was completely inadvertent, but I want the record to be clear, because obviously, we had just finished a rather sensitive colloquy with Your Honor about ad hocs, and I don't think that's anyone's view. And I'm looking at body language that completely agrees with my position.

Third point, Your Honor. I think that your opening question to Ms. Singer actually was, I've read everything,

could you please tell me what the further changes are, including the ones that you referenced from this morning. I don't actually think that question was answered. And because this is such a delicately done document, in which, frankly, paragraphs and words were looked at by many people, with extraordinary care, rather, I think, than burdening the Court with let me tell you or show you what happened this morning, although that may be the Court's pleasure, the core parties who sat and wrestled with this thing night after night, clearly need to see those.

And I think you deserve an answer, we all need to have an answer. Because as it turns out, and this is my fourth point, one of the changes that we saw for the first time -- which is fine -- obviously they were working around the clock and we have no -- we brook no disagreement with that -- one of the changes we saw for the very first time in court this morning when they handed it out at the beginning of Ms. Singer's presentation, in fact, doesn't work. And we had a little conversation about it while Your Honor was back in chambers. And I actually think we have language that will fix it to everyone's satisfaction.

It was another creditor's point. We understand it. In fact, we had talked about closely related issues. But I think that rather than trying to draft at ninety-five miles an hour on the fly with a full courtroom of people who care

passionately about that particular point and others, I think that probably some mechanism where whatever the further changes are that we haven't seen at all, because they're not even in this blackline -- she referenced further changes agreed to only this morning -- we clearly need to see those. And based on the little conclave that happened here while Your Honor was in chambers, certainly as to the potentially substantial and not-so-okay change to paragraph 1(b), I think we've already seen our way through.

I'm confident that we will be able to address any of the new, new comments, and just make sure that they don't gore someone else's ox by accident, as this one did. And in fact, we have a pathway through procedurally.

One other kind of very small point and then the final point. I'm actually going to be incredibly brief. One of the things Ms. Singer said about the categories of documents for which, as an initial matter -- and Your Honor, I think, has correctly noted, this is unthinkably complex, and this has to be a living, breathing document. And if there are issues, there may need to be issues to be resolved.

Ms. Singer did say that it's the debtors' view that one of the reasons for a categorical exemption initially of certain types of documents is because they will likely virtually all be privileged. Just to be clear, we don't know that. We don't know enough to know that. And we're not sure

we agree, which is why the document is actually pretty sophisticated, and in fact, as heavily negotiated, specifically said "presumptively" this category is not open hunting. But if there are things you need to know, you're absolutely entitled to ask them. And we will go look.

So I just didn't want to share the last piece of what she said, which is, and we think they're all going to be privileged. That's -- she may be right, but that's not a shared assumption. That's just their preliminary view.

And then finally, I do want to note that I also appreciate, because it matters -- and, you know, the Court doesn't always know when it sees a final product, what was very heavily negotiated, what was of great concern to the parties -- the thought that Ms. Singer articulated in the name of Weil and the debtors, which is that it's not really the debtors' business to be deciding who is the clearinghouse for discovery against the debtors, and that that's best left to the parties. We really appreciate that and we really agree it. And the document reflects that and it's correct.

In fact, a huge umbrella of parties, that we had an awful lot of involvement with, including the LBSF folks at large, a whole bunch of foreign affiliates at large, and frankly some other parties Your Honor has heard from a lot in these cases, that we spoke to, think we know who it has to be, because there's probably only one law firm that you know will

be in the same role, and anyone else could settle, and then disappear. And you can't have one firm be the clearinghouse in discovery against the debtors to be told two months before confirmation, sorry, we've just settled and now we're completely supporting the debtors.

So, we'll figure that out and we'll figure out how to, once again, get an even bigger group of people in the room, to pick the people and designate them. Because as others have remarked from the podium, there's a whole universe of creditors that belongs to all these groups collectively, but we'll figure that out as it comes.

And with that, since I don't -- other than needing to have 1(b) fixed, because it's not okay as currently drafted, and needing to just see what further changes are made, we actually think that this is a pretty amazing piece of groupthink and very hard and assiduous work.

MR. MILLER: Your Honor, just a point of clarification. I'm not sure I understand what Mr. Huebner was asking for in connection with the drafting. Are you asking for an adjournment or what? I'm not sure.

MR. HUEBNER: No, I'm sorry. I don't imagine there was confusion, but I guess I'll say it again. Paragraph 1(b), which was changed very late last night at the request of one party, which none of us saw until they handed them out, not first thing when we got here, but right when Ms. Singer began,

needs to be tweaked, and we had a conceptual conversation. I think we'll figure it out together right after the hearing. Assuming we can agree on 1(b) and assuming that whatever other changes that we just haven't seen yet -- and there may be none -- there are no more? This is it, the blackline?

MS. SINGER: If I may, Your Honor, just to be clear --

UNIDENTIFIED SPEAKER: There are people on the phone.

MS. SINGER: Your Honor, just to be clear, what we handed up to you this morning, the 1(b) changes were -- that was from the debtors' point of view, there were no further changes. That represented the last -- debtors' understanding of what the last negotiated point was. My understanding is that that may have subsequently changed, and to the extent it has -- but there were no other changes to it from the debtors' point of view, to the order at all.

The three -- the three things that changed were the proposed language to 1(b), the, I believe, accepted language to 11(c), and a few handful of changes, adding the U.S. Trustee, making it clear that the U.S. Trustee had the ability to participate fully in discovery. Those were the only changes since what was filed on the record on Monday.

MS. SCHWARTZ: Except there was one change today, this morning in court, that you guys agreed to put into the order.

MS. SINGER: It falls into the same category.

MS. SCHWARTZ: But it's not in the document the judge

has.

MS. SINGER: There's one additional place where the U.S. Trustee has asked us to clarify that the U.S. Trustee has the ability to fully participate in discovery. We've agreed. It was a language oversight, and we will make that scrivener's change.

MR. HUEBNER: Then, Your Honor, it's even easier. Maybe I was the only person confused. It sounds like the blackline that we were handed, has just one issue which we know about and we've already discussed. We certainly are not requesting an adjournment. We think that that change can be negotiated very quickly, post-hearing, other than, obviously, Your Honor ruling on other people's substantive objections, and then the people for whom we speak will be satisfied.

THE COURT: Okay. Mr. Mayer is standing, and I'm not sure if it's because he wants to jump the line or he has something else to say.

MR. MAYER: What I have to say relates to what Mr. Huebner said. I therefore thought it would be appropriate for me to speak at this time. But I'm happy to sit down and let Mr. -- if Your Honor wishes other people go first.

THE COURT: Well, why don't we do this in the order in which people are aggressive enough to get to the podium.

UNIDENTIFIED SPEAKER: Mr. Miller?

MR. DESPINS: Good afternoon, Your Honor. Mindful of

Your Honor's comments -- for the record, Luc Despins with Paul Hastings, on behalf of CarVal Investors UK. Mindful of Your Honor's comment, I'll be very brief.

The first issue is really, I think, an unintended consequence of what the U.S. Trustee just said, which is that she wants the ability to access even things that are marked confidential. I don't have an issue with that, except that the debtors, in their order, as a cost of entry to this process said, you must disclose what you hold. And my first reaction is, I'm not a group; I'm CarVal, I have no obligation to do that under Federal Rules, but I'll do it, as long as I can mark that confidential. They've agreed to that.

Now, there's a yin and a yang, which is, if the U.S. Trustee is going to say, oh, no, this -- the public has access to all of that, then unfortunately, I can't agree to that, because there's no basis under the rules for me to be subjected to disclosure of what I hold, to get discovery. I mean, it doesn't exist. 2019 doesn't apply to us.

So I don't know what to do. Meaning, if Your Honor is inclined to not -- not to heed their comments, that's fine. But otherwise, unfortunately, our agreement to disclose what we hold, if it's not going to be confidential, is a problem. So I don't know how to deal with that issue. It just came up now, meaning that -- so --

THE COURT: Well, it may be that the parties will need

to talk with counsel for the U.S. Trustee on this point. I'll tell you what I understood, and it doesn't necessarily create the problem you're describing, unless a document that includes disclosure of your client's holdings is referenced in a pleading that is to be filed in connection with confirmation; in which case, under the existing format, it would be automatically sealed, and under the format proposed by the U.S. Trustee, presumably, there would need to be a sealing motion filed beforehand, it or might be public.

MR. DESPINS: If it's limited to that --

THE COURT: Do I understand that, correctly?

MS. SCHWARTZ: Yes, Your Honor.

MR. DESPINS: Okay. Because I want to make sure, just so she understands, that we are going to disclose to the participants of the discovery, our holdings. We're going to mark it as confidential, and apparently that's okay.

MS. SCHWARTZ: We -- just for clarification, as I read the discovery procedures order, there's a whole process by which parties can designate information confidential, attorneys'-eyes-only. There's a process for people to dispute that. If there's a dispute, it could be brought to the court. We have no problem with that process. Our comments were strictly limited to documents that were going to be filed with the court that had been previously marked as confidential or attorneys'-eyes-only --

MR. DESPINS: Okay.

MS. SCHWARTZ: -- and the judge accurately stated what our position is.

MR. DESPINS: Okay, thank you. And I'm glad we resolved this. On to the main point.

Our issue is limited, Your Honor, to 3(j). And this going to really be -- again, given Your Honor's comment, this is going to be in the nature, mostly of a placeholder. 3(j), Your Honor, is a provision that says the debtor does not have to search categories of documents, because, as Ms. Singer said, they believe that they're very likely to contain privileged information.

I'm not asking the Court to make a ruling on whether what I'm about to describe is privileged or not. What I want, though, to be clear, is that our issue in this case is also sub-con, in a different context. We hold a lot of claims against LBIE, the U.K. entity, and we have guarantees from the parent. We don't believe -- but we're not asking the Court to opine on that today -- that communications between LBIE folks and LBHI folks, counsel or not, are privileged. I'm not asking the Court to rule on that. We want to make sure they understand. We're going to make a discovery request for those documents.

And there's a safety valve, as pointed out by Ms. Singer, in the order, that says the Court -- if there are

targeted discovery requests, the Court can order them. I don't want to be faced with an argument three, four months down the road, that oh well, we didn't know that; that's too broad; we didn't have time, et cetera, et cetera.

The issue is placed on the table now. These documents, we want them to search them. I'm not asking the Court to order that today. I want to make sure, though, that we're not going to be prejudiced three or four months down the road when we ask for that and they say well, there's not enough time, it's too burdensome, et cetera. So as long as we have that placeholder, I'm happy to sit down.

THE COURT: Does that mean, when you say you're happy to sit down, that you don't have an objection to the form of order that's before me?

MR. DESPINS: As long as it's clear that we will come back on that issue, meaning that the Court will reserve that issue for a later date, correct.

THE COURT: Fine.

MR. DESPINS: Thank you.

MR. MILLER: And it's reciprocal on our side, Your Honor. We reserve all rights also.

MR. BROUDE: Good morning, Your Honor. Mark Broude, Latham & Watkins, on behalf of Bundesverband deutscher Banken, which I'll refer to as BdB. It's a lot easier. A few items. And I think with each of these I have a relatively simple way

to deal with them.

The first one is a question of timing. And not so much when discovery starts, but the concept of when discovery has to end. And the debtors have discovery ending or discovery requests effectively ending in mid-May, by the way the calendar works, which is over a month before any disclosure statement is even up for approval. Their safety valve, they say is that, well, if there are changes to the plans then you can make new discovery requests that relate to those changes, which is fine.

But, for example, it doesn't deal with the fact there might be material changes to the disclosure statement required to obtain Your Honor's approval that, in fact, the disclosure statements satisfy 1125. Those aren't changes to the plan. There may be brand new information there coming up after the discovery deadline has passed. It also may be that a change in a provision of one plan has impacts throughout the document. I think it's -- sort of to cut it short -- I think what makes sense is, in Section 15(a), where they talk about re-upping and re-allowing discovery, two changes are made: one, it includes a reference to changes to the disclosure statement as well as changes to the plan. And then rather than having their fourteen-day time clock for new discovery to run from when those things are filed, since I assume that as we get close to the disclosure statement hearing, there will be multiple filings, that that fourteen-day period start to run from the

date of the disclosure statement hearing, so that we know, at that point in time, we have the final document that Your Honor is being asked to approve, and then we know what changes have been made between today or middle of May and that disclosure statement hearing.

THE COURT: Mr. Broude, I'm not sure I understood that last point. The disclosure statement hearing is currently scheduled for June 28th. It may or may not go forward on that day.

MR. BROUDE: Right.

THE COURT: Let's assume that that's the date. And there is an amended disclosure statement filed at 2 a.m. --

MR. BROUDE: Correct --

THE COURT: -- that day. That's my hypothetical. What discovery right do you have at that point?

MR. BROUDE: Discovery requests as to the changes to the plan and the changes to the disclosure statements, between effectively today and 2 a.m. on June 28th, and the period of time for those incremental, nonduplicative discovery requests is fourteen days from June 28th, rather than fourteen days from the date they are filed, which in your hypothetical is the same.

I'm concerned about there being one document filed on June 15th, another document filed on June 20th, another document filed on June 27th, and the last document filed on

filed on June 28th. So you would, in effect, have four different fourteen-day periods running simultaneously, and trying to make sure your discovery requests are in on time, could be somewhat challenging.

THE COURT: So what is it you want?

MR. BROUDE: Just two changes which are simple drafting in 15(a). One is where it talks about discovery upon a change to the plan, it says "or disclosure statement"; and that the fourteen-day period referenced there, runs not from the date of the filing of any particular document, but the date of the disclosure statement hearing or really the entry of the disclosure statement order, since that's when we know the document has stopped moving.

THE COURT: So does that mean that if a disclosure statement hearing commences on June 28th, that there be a two week discovery period thereafter?

MR. BROUDE: Let's assume that the order approving the disclosure statement is entered on June 28th, and there have been certain changes made between now and then, there would be the right -- and this is already in the debtors' plan -- debtors' document as to changes to the plan in any event -- to seek document requests solely related to the changes, starting on June 28th, for the two week period, so through July 12th.

THE COURT: Let's say I approve the disclosure statement on June 28th. That's discovery that would be used in

connection with confirmation or --

MR. BROUDE: Correct. This is --

THE COURT: -- okay.

MR. BROUDE: -- all solely in connection with confirmation.

We objected to the fact that there's no mechanism for picking a designated participant. In accordance with Mr. Huebner's comments, I think we're comfortable that there will be one picked. Our concern was really that there would be -- that nobody would want the job, and then what happens. But as long -- I mean, I gather that there will be someone to do it, and they'll be picked relatively quickly, so that's fine.

In terms of mechanisms for forming groups. Again, the debtors wish to create constructs and then abdicate implementation. I think here it's very simple. You'll have groups that will be fairly large. You could have all kinds of e-mails among the groups running back and forth, different people proposing different times and things like that. When the debtor sends out the list of the people that are in each group, they can simply schedule a meeting which they don't have to take part in -- you can say everybody in Group A show up at Weil Gotshal's offices, two to five business days thereafter, during business hours, here's the time, here's the date; show up. At which point the group can take care of itself.

I'm more concerned about it taking forever for the

group to simply find a time and place to meet. And so if the debtors simply say everyone shows up here at this point in time, then the debtors can wash their hands of the group. They've done what they can to get the group working.

THE COURT: So you want the debtor to have a kind of camp counselor role in connection with this?

MR. BROUDE: To a certain extent, yes, Your Honor, because these are going to be large groups. I agree with the debtors. You can't have fifty different groups for each particular set of interests, but more -- you can have a group with fifty people, and they'll send e-mails running around saying let's meet here, let's meet there. Nothing happens.

The debtors are creating a construct and sort of hoping that the groups, regardless of how large they are, will coalesce extremely quickly. It's a very -- as Ms. Singer said, it's a very aggressive time frame. I just think there needs to be a mechanic sort of forced on the group so that they actually have their initial meeting.

With respect to the privilege categories -- again, this goes back to Section 3(j) -- there are two categories in particular that cause us some consternation. One is the hard copy files of in-house counsel, which as Ms. Singer says, are virtually certain to be mostly privileged. There's, you know, high likelihood there's stuff there that isn't privileged. And the question is, are they entitled not to search it simply

because it'll be too hard for them to.

They say well, we'll search it if you give us specific directed questions. It may be difficult to even ask the questions if we don't know what's there.

And with respect to the internal files of advisors, they'll say we'll search those only if that advisor is going to be a witness. Two issues there. One is how am I to know if I want that advisor to be a witness, even if the debtors don't want if I can't get that advisor's files. And second of all, how am I to know whether those advisor's files may, in fact, be relevant to a witness outside of that advisor, particularly where there will be disagreements among advisors as to what the right result, for example, for substantive consolidation is; the files of one of the debtors' advisors who may not be a witness, may be incredibly relevant to cross-examining another of the debtors' advisors, or an advisor that some other party is putting up on the stand.

And then I think there are two points I want to make with respect to deposition scheduling, a point, I think, we may be the only people raising this. The debtors' order provides that all depositions are scheduled based upon the debtors' unilateral declaration that document production is substantially complete and that fact discovery is complete. That declaration, the debtors can make without court input or review. It simply says that once they send that notice out,

that's it. All the deposition scheduling runs from there.

It's very easy for the debtors to say that they think document production is complete. The participants may not agree with that. And we just think there needs to be a mechanic in there for that dispute over the debtors' declaration to be addressed, and that the deposition schedule does not actually start until that mechanic has gone through, so that people have an opportunity to say no, I'm engaged in material fights with the debtor over a particular document production. And having that deposition go forward while that fight is ongoing, would in fact be materially prejudicial.

Lastly, the debtors have rebuttal expert deposition -- rebuttal reports, rather, due within a certain period of time after the expert reports are due, without regard to when the expert deposition occurs. And since the results of that deposition may have a material impact on the rebuttal reports, we think the debtor -- that rebuttal reports should be keyed off of the experts' deposition, not off the actual delivery of the report. Thank you, Your Honor.

THE COURT: Okay. It's about time you made it.

MR. MAYER: Thank you, Your Honor. Tom Mayer of Kramer, Levin, Naftalis & Frankel, as counsel for -- and this is actually -- the identification of client is important here -- Lehman Singapore Liquidators. I don't represent the following parties, but I think I'm sort of speaking for them.

They are represented separately in this courtroom. And they are the other foreign Lehman estate: Lehman Australia, Lehman Hong Kong, Lehman Japan, Lehman Re, which is Bermuda, and Lehman Finance, which is Switzerland. Did I miss anybody? Okay.

THE COURT: Is this now a group?

MR. MAYER: No, Your Honor. I don't think this is a 2019 group; this is merely for purposes of economy at this hearing.

These are basically nonparticipants. That's why we sort of grouped together to speak together. And it deals with an issue that Mr. Huebner raised in terms of Section 1(b). Several of us filed objections to this protocol on behalf of parties, Singapore in particular, and also, I believe Lehman Re filed and Lehman Finance filed, because many of us don't intend to be participants in this protocol. We will have little discrete one-off issues with the debtors over our claims.

I'm not here for Lehman Brothers Treasury, which has a plus-minus thirty-four billion dollar claim. They're probably going to be a participant. That's going to be a plan issue. We got that. I'm here for Lehman Brothers Singapore. We have maybe 200 million dollars of claims. Probably not even. We don't intend to be a participant. We don't intend to take earth-shattering positions on sub-con or not. We are negotiating with the debtors over how much our claim is. We

hope to get to a deal.

The way the plan reads, unfortunately, if you don't get to a deal, the plan says your claim is estimated at a buck. That -- whether or not that's enforceable, is an issue for another time, but it raised the whole question of does this proceeding on plan discovery foreclose people two, three, six months from now, from finding out they don't have a deal with the debtors, they need to take some discovery just on their claim.

But we wanted to make sure there was language in Section 1(b) that said that people who don't plan on participating -- because all we have is little bilateral issues -- don't wake up six months from now and are told, wait a minute, too late, you should have been a participant. You should have spend the millions of dollars necessary to be a participant, because now you need discovery on just your claim.

Now, we were working on language with the debtors to solve that problem. Mr. Huebner brought up another issue. I assume Mr. Huebner was a participant. It never occurred to me this was going to gore his ox. And apparently we did, and I apologize for that. Although as perhaps corrected, it was not one party who asked for this change, it was six.

In any event, we hope to work out language with the debtors to solve this problem. And all I ask the Court, because we do expect, when have language to solve this problem,

we'll withdraw our objection, and from our perspective this will then not be a contested order, is that there has to be flexibility for nonparticipants to come back and just get discovery on their little issues. This can't be an exception that swallows the rule. We understand that.

And I think this may be an issue that's best dealt with when there's something concrete for Your Honor to look at, two, three, six months down the road, if there is, in fact, a bilateral issue. But we were concerned that we not be foreclosed from dealing with our relatively small bilateral issues by this gigantic order. And that's the only point I wanted to make. I'm happy to take questions if the Court wishes.

THE COURT: I realize that Mr. Huebner had an issue with 1(b). Are you satisfied with the language of 1(b) as it presently exists?

MR. MAYER: We had indicated to the debtor, with the reservation that I just put on the record, the answer was yes. With respect to what Mr. Huebner wants, we may probably also get to yes. What he wants is not, as I understand it, too much different from what we want. So I think with a half an hour or so of drafting we can probably get to agreement amongst all of us. I'm not trying to foreclose Mr. Huebner's objection. I'm just saying that's -- he comes to this from a perspective of somebody who's a participant, and we're coming at this from a

perspective of people who are not participants. But we'll -- I think we can get to yes on language.

THE COURT: Fine.

MR. MAYER: Thank you. I should probably ask if I stated correctly. Am I okay, folks? Thank you, Your Honor.

MR. WILTENBURG: Your Honor, David Wiltenburg; Hughes, Hubbard & Reed on behalf of the SIPA trustee. I'd like to speak briefly in support of paragraph 6(m) of the protocol, which is designed to avoid duplication where documents are in the possession both of the LBHI debtors and at least theoretically in the possession, custody and control of the LBI trustee.

This is an important provision. And, Your Honor, it's found at page 27 of the --

THE COURT: I have it.

MR. WILTENBURG: -- blackline. This is an important provision, because as Your Honor is aware, the LBHI debtors and LBI shared information systems. And it's just going to be quite a common occurrence that the same documents and information are in those systems -- are potentially accessed by both parties. And of course, as this is a protocol in support of discovery relating to the LBHI plan, as Ms. Singer said, it's appropriate that LBHI be the party to respond to requests of those kinds.

Now, we're informed that one objector proposed this

morning that the operation of paragraph 6(m) be qualified not by the fact of access by both parties but by a requestor's belief as to whether both parties have access. And of course many parties can have many different beliefs. And it's a fact whether there is joint possession, custody or control. And so it shouldn't be a consequence of an erroneous belief on the part of a requestor on that subject, that duplicative discovery occurs.

Finally, Your Honor, no party needs to be concerned that what happens with respect to this protocol will limit or waive discovery rights that exist in the SIPA proceeding. I would invite the Court's attention to Section 1(d) of the proposed protocol, which states quite directly, "Nothing in this order shall be construed to apply to the separate SIPA proceeding."

And so, Your Honor, to sum up. We believe that those two principles should remain in place in the final order. First, the separateness of the SIPA proceedings; and secondly, the promotion of efficiency, avoidance of duplication and a burden that is embodied both in paragraph 6(m) and in many of the other provisions of this proposed order. Thank you, Your Honor.

THE COURT: I understand that's your position on behalf of your client. But is there any controversy with respect to the language that you've highlighted?

MR. WILTENBURG: I believe there is an objector that is -- would like to address -- it may be that an objector will address the Court on that subject.

THE COURT: So you're basically staking out your position that the language of the order is appropriate, and that I should disregard whatever that objector is about to tell me.

MR. WILTENBURG: Well, if it's inconsistent with that principle of separateness, then we would oppose it, certainly.

THE COURT: Okay. Understood.

MR. STEEL: Your Honor, I'm not an objector. Howard Steel of Brown Rudnick on behalf of the Newport and Providence Funds. We're trying to be a friend of the process here and brief.

As Mr. Wiltenburg identified, we have a different issue from all the other objectors. We have a fight with the SIPA trustee. I don't think the debtors have a real dog in this fight over this provision. It is provision 6(m) of the proposed order, and we have two problems. I think Mr. Wiltenburg did a good job identifying the problems. But first we think, as drafted, this language forecloses third-party due process discovery rights against the SIPA trustee. Mr. Wiltenburg pointed to the provision in 1(d) that says, "Nothing in this order shall impact the SIPA proceeding," and I appreciate his concerns. But this clause 6(m), the language

starts, "Notwithstanding anything in this order to the contrary, to the extent participants seek discovery of documents that are in the possession, custody or control of the debtors and the SIPA trustee, the participants shall direct such document requests to the debtors.

So I think this directly impacts third-party discovery rights against the SIPA trustee, whether it be for SIPA claims, which Newport and Providence have. They have disputed SIPA claims, as the Court is well aware, that we have ongoing discovery requests there and we also have ongoing contested litigation that's not even been scheduled for hearing yet. And we have Chapter 11 claims arising out of that prime brokerage arrangement, and also guaranty claims. So we're very active on plan issues and we're also very active in the SIPA proceeding.

So we looked to this language and we thought it's foreclosing third-party discovery rights against the SIPA trustee. And we also said, well, we don't know what documents the SIPA trustee has as compared to the debtors. So those were our two infirmities with this language. So we sharpened our pencils and suggested some clarifying, some modifying language. In our objection we asked to strike it. That would be good. But we thought we could refine the language and propose modifying language to the debtors. This morning the debtors said all right, let's talk to the trustee. The trustee said no go.

But I wanted to propose to the Court our modifying language. And if the Court would accept this language, that would palliate our objection. We asked two things to focus on. One, clarity that this clause 6(m) is directly related to plan issues. If we're serving discovery requests related to plan issues, we're fine with it going only to the debtors. And second, I want a reservation of rights, something --

THE COURT: But isn't true that in the scope of the order, paragraph 1(a), it's very clear that this is all about plan issues? We're not -- I mean, I don't blame you for being a careful lawyer. But in the same way that Mr. Mayer on behalf of his client and others that allowed him to speak on their behalf was attempting to protect against the contingency that there would be some preclusive effect on the ability of a party to deal with a bilateral claim issue, I don’t view this order as either affecting anything that goes on in the LBI separate proceeding, or affecting any discovery that isn't plan discovery.

Now, if I'm missing something very basic, somebody should tell me. But if that's true, I don't know what your concern is.

MR. STEEL: Well, my concern is the language used in this provision. I think it undercuts that intent. I think Mr. Mayer and the folks did a good job clarifying the claims issue. I think it's very clear that this is only pertaining to plan

issues. But this language says notwithstanding anything else in this order, if a participant seeks discovery of any documents that are in the possession, custody or control of the debtors or SIPA trustee -- we don't know what those document might be -- the participants will only direct those to the debtors.

So I'm only asking to slide in for plan issues that the participant reasonably believes those parties might both have, because we don't know what they have. We've been seeking discovery of the SIPA trustee since the commencement date, and we still don't really have any bona fide discovery. We don't know where we are. So we've asked to put that request in.

And then just a real general reservation of rights to give our client's the comfort that nothing in this order shall prejudice any discovery rights in the SIPA proceeding or in any way limit a participant's right to discovery of the SIPA trustee. I think this is a pretty benign reservation. I think that was the intent of this order. But the SIPA trustee has disagreed.

MR. MILLER: We would agree to that language, Your Honor.

MS. SINGER: Your Honor, if I may? This is another of these -- I think we were e-mailing at seven or eight o'clock this morning. And I think within -- I'm sure we could come to some sort of agreement on this issue.

THE COURT: Whether you do or you don't, I know that the intent is. And if it's be construed, and I'm the one construing it, no one's going to be hurt.

MR. STEEL: Thank you, Your Honor.

MR. CLARK: Good afternoon, Your Honor. Bruce Clark, Sullivan & Cromwell, for Giants Stadium. We do not have a drafting issue. I'm not going to ask you to look at a particular paragraph.

Giants Stadium was in an interest rate swap with LBSF, the obligations of which were guaranteed by LBHI. And what we have been told in the disclosure statement about derivative claims like ourselves, is that the debtors had outstanding at the time of the filing, 1.2 million derivative contracts. Now, they have obviously resolved some of those. There was a letter delivered to you yesterday that said they resolved seventy through ADR process. And I think Mr. Slack mentioned that he resolved another several thousand in the course of the recent months. So some of those have been resolved. No doubt about that.

But what they've said about the allowed amount of derivative claims in the disclosure statement on page 85 is the debtors have spent significant time valuing each of the derivative contracts and determining the appropriate amount for derivative claims. And they go on to say they have developed -- the debtors have developed a uniform and

standardized methodology to calculate derivative claims which is reflected in a derivative claims framework which is going to be applied, under the disclosure statement's language, to claims like ours, including claims against LBHI as guarantor. Presumably that framework was used. It's been in place for some time, according to the disclosure statement, in resolving the derivative claims that have already been successfully ended.

Now, our problem is we don't have the derivative claims framework. We don't know what they intend for derivative claimants like us. We've asked for a copy; we have been denied that. And in order to participate in the discovery process that is contemplated, it seems to me derivative claimants like us, who have a very substantial claim, need to know that. And that's the problem we have. The fix is easy. If we could get the derivative claims framework then we could decide whether or not to participate and how to formulate discovery requests and things of that sort. It's going to be much harder without that document, without that framework.

The debtors stood here this morning and said they'd favor full disclosure and full transparency. It should be applied here. And they have also indicated that they are going to move for approval of this framework in this court before their disclosure statement hearing. It's going to become a public document then. Why not put us on a level playing field

now in connection with this discovery issue so that we can participate like some of the others. That's our pitch.

THE COURT: But let me just understand what you've just told me. You're not objecting to the language of the order or the concept of the order. You're seeking particularized discovery for yourself now.

MR. STEEL: We're seeking to -- you're correct on the first two points. We are not criticizing the language of the order or the concept of it. We understand it. We think it's a good thing overall. But for my client to participate as a very substantial derivative claimant, they ought to understand what is not in the plan and what is not in the disclosure statement, namely, how that claim is going to be treated, so that we can participate too. If that is particular, perhaps it is, but it's fair so that we can be on the same playing field.

THE COURT: Okay.

MR. CLARK: Thank you.

THE COURT: Do you want to comment in respect of that?

MS. FIFE: Yes. Good afternoon, Your Honor. Lori Fife on behalf of the debtors.

Let me respond to that comment. The derivatives settlement framework doesn't exist so we can't really provide it to the attorney for Giant Stadium. It is a work in progress. We are in the midst of negotiating it with several creditors. But it is also going to be the subject of a

separate motion which we hope to bring to the Court prior to the disclosure statement hearing, and in connection with that motion parties will have an opportunity to seek discovery. So I think that clears up that objection.

THE COURT: I think it does too. You can't turn over what doesn't yet exist.

MS. FIFE: Thank you.

MR. SHORE: Your Honor, Chris Shore from White & Case for the ad hoc group.

THE COURT: Before --

MR. SHORE: I rise --

THE COURT: Just before you start I just want to get a sense as to where we are. It's ten after 1 and I'm trying to get a sense, because I haven't been keeping score as to the number of people who've spoken, I just want to make sure I know -- I see Ms. Granfield there; that's for Barclays, presumably. You're there for the ad hoc committee. I'm just trying to get a sense of timing. Committee?

MR. SHORE: Brief.

THE COURT: Brief? Let's just proceed.

MR. SHORE: Okay. So I rise in support of the motion here. I want to comment first on the need for procedures and give Your Honor a context of kind of what discovery we're talking about because there hasn't been much said about that. I'm not going to go over the history starting with how these

procedures started but I do want to comment on one of Mr. Miller's comments on the bookends of sub-con and de-con. Both plans out there right now are settlement plans that are intended to land somewhere between those bookends. We may see other plans that stake out 100 percent on one side and 100 percent on the other.

Anybody who's been in the case and following along pretty much knows what a sub-con recovery looks like. You value the assets, you determine the total third-party claims, you divide the assets by the claims. The discovery's going to help refine that on valuation points, on what the third-party playing points are. But the other bookend has been the huge mystery in this case and why we've been asking for documents. It's really what a deconsolidated plan is. That is one which recognizes separate existence and determines a fair statement of the assets and liabilities of each of the debtors.

The debtors have taken no position on that. There's nothing in the disclosure statement on that. That's a gargantuan process here and one that has to be done. Go through the inter-company claims. What are legitimate claims, what are illegitimate claims? What are the value of the Chapter 5 actions? We all know about all the repos that took place in the summer of 2008. What of those were fraudulent conveyances? What of them were preferences? I gave you the chart on Innkeepers, that one little securitization structure,

assets moved everywhere in the months leading up to the bankruptcy. We have to get a sense. We don't necessarily have to resolve that issue but we have to get a sense of what those are. We have to find out where assets belong. We have to find out where liabilities get done. It is a gargantuan job that the parties are committing to do here. But in approving these procedures, it bears noting, one, we have to have procedures otherwise this is all going to get bogged down.

I rise to make two other understandings clear here. And let me also not only thank Weil for doing it, thank Ms. Singer for doing it. We've spent hundreds of hours on this, I know she's spent many more multiples of that, and I believe she deserves a special commendation for putting up with all of us on the phone. On the specifics of the order, though, we have two understandings that generally cover the order. And I think Your Honor's touched on them but they're very hard to draft.

One are issues related to finality. Of course every litigant wants the opportunity to have maximum flexibility in approaching the case in how they want to do it. People want to join late, people want to sit on the sidelines, people want good cause relief, people want new searches, new targeted searches. Our understanding is that these procedures that are being adopted are a discovery order. These are not guidelines. People are supposed to subscribe to this order, follow the procedures, and live by them. We're not going to have people

coming in late in the game saying oh, I just spotted an issue, I want to get involved.

Now let me say two things about that. First, I think it does make sense in the context of what we just now agreed to on the disclosure statement hearing that if other people are filing plans maybe we want to hold off the initial discovery request until all the plans are on file, which is probably about a month by now. We could talk about that. But given the size of the matter and the complexity of what I've described, people are going to have to be flexible in doing this.

As someone said, it's a living, breathing document. I guess that's right because issues are going to arise like they've arising throughout this case. The default is to come back to Your Honor and show good cause why we need to modify something, why a timeline has to be drawn out. These are very, very aggressive time lines that the debtors have set for themselves -- for themselves on doing electronic searches and producing what -- I think someone's probably right -- ten million documents in this case into a repository. They may not be able to do it. Rather than burdening the Court, though, I think our other understanding is everybody's going to have to act in good faith here. Comments -- I hope the debtors aren't going to over-designate confidential documents. I hope the SIPA Trustee is not going to hold back documents. I hope that other participants aren't going to take the position that their

entire case is going to go in on rebuttal. But unless the parties are charged with acting in good faith here and trying to minimize the burden on the Court, just the sheer size of discovery and the number of procedures set forth in this order that have to be followed, it's going to be a terrible process. So I stand and ask the parties, as somebody who's lived through this kind of confirmation discovery before, to work in good faith, to try to be reasonable where possible but still live within the tenant that the order that's being set today is a set of procedures that if we all start moving away from without really considering it, we're never going to get anything done.

THE COURT: Before you sit down, Mr. Shore, that was a very statesman-like presentation, by the way, and I just want to ask you a question which I think is obvious. You've participated in the process and others in your firm have participated in the process of developing these procedures and I take it that on behalf of the ad hoc group you're satisfied that this is about as good as we can get at this point?

MR. SHORE: Absolutely.

THE COURT: Okay, thank you.

MR. SHORE: You're welcome.

MS. GRANFIELD: Very briefly and quickly, Your Honor. Lindsay Granfield on behalf of Barclays Capital, Inc. and its affiliates. I apologize, there were no written objections relating to any of the Barclays related provisions in the

order. And I wouldn't have stood up except that I heard Mr. Willett mention Marquis and unfortunately I couldn't hear everything he was saying at the time that he was speaking. I don't think he was asking for any changes in the order, and that's fine. I heard something about, "Oh, with that clarification from the debtor". I think it might have just been about the fact that the debtors certainly intend -- you know, the Barclays provisions are really just about the fact that pre-closing information about Lehman, for the most part Lehman really does have access to it or really actually possesses it already. We can't know everything that everyone's going to ask for. And so to the extent there may be some things that the debtor needs to seek access from Barclays, there are provisions in place, contractual provisions in place, other ways that the debtor can do that. And so that's -- all those provisions about Barclays are just not doing things twice and not putting Barclays in the position of kind of rushing rough shod over the procedures by having people end-run them by coming to Barclays rather than going to the debtors.

If there are no changes to the order, I don't have any further comments. But it wasn't quite clear to me what had been said about Barclays, so I just didn't want it to go past without knowing whether there was an issue or not.

THE COURT: I think the answer is there's no issue.

MR. COHEN: Good afternoon, Your Honor. David Cohen,

Milbank, Tweed, Hadley & McCloy here on behalf of the official committee of unsecured creditors.

We agree with a lot of the comments that you've heard today that this is as good as it gets. The committee started working with the debtors on the discovery protocol in November. For five months we've been engaged, if not daily almost every other day at least, in working on these proposals. It's a fifty-four page order. The first draft was three pages long. This reflects a lot of compromise. From the beginning the debtors took input from the committee, were accepting of it, it is reflected in the draft. You've heard from a number of creditors that the debtors took their input as well. This is a compromise order that reflects the best thinking of a lot of people who have a lot at stake in this case.

The order also contemplates that the committee, the debtors and the individual creditors will continue to work together productively to get through the procedures contemplated by this order. As we stand here today there's no reason to believe that's not going to happen. Everybody shares the goal of getting to a confirmation hearing in a reasonable and appropriate amount of time, giving all parties-in-interest access to relevant information without the discovery free for all and reducing the burdens attendant to discovery, particularly in the context of this case. For these reasons and those set forth in the committee's filed statement in

support of the motion, we ask that the Court enter the order as submitted by the debtors. Thank you.

THE COURT: Thank you. Is that the last word?

I'm reminded of the hearing that took place a number of years ago in reference to the bar date order in this case. And there were any number of objections to the unique form of order that was entered. And the stakes couldn't be higher than whether or not a particular claim is timely filed and properly asserted against the debtors. Similarly, the document that has been evolving over time and that is now before the Court quite obviously is a collaborative effort, an effort that has included the input of multiple parties-in-interest, and as I said earlier, no doubt while best efforts of the parties, has some flaws.

Earlier today I approved, over an objection, a sixth supplemental order having to do with certain procedures in the case. I think that's useful background for what I'm being asked to do now. The New York Times indicated in connection with the Masters Tournament that just took place that the individual who won happened to be ahead at the time that the match ended. And in effect, the order which is before me today is the form of order that happens to have been agreed to in time for 10 a.m., April 13, 2011. I have no doubt that if the parties had until May to work on this order that there would be plenty of work to do and plenty of people to speak with about

adjustments to the order that will not necessarily make it better.

One thing is clear. An order establishing procedures in connection with plan related discovery is absolutely critical. Ad it's also clear that I have not only the authority but the duty to enter such an order in order to make the process that you are about to embark upon as rational, orderly and efficient as possible.

There are any number of objections that remained outstanding and that I've listened to this morning and I'm going to overrule most of them.

As to the language of 1(b), which apparently is a subject of ongoing discussion, I have reason to believe, based upon the comments made by Mr. Huebner and Mr. Mayer, that to the extent there are disagreements as to the form of that paragraph that that's simply a question of lawyers talking to one another and maybe tweaking the language.

As to the arguments made by counsel for State Street, with respect, I don't believe those arguments are particularly persuasive and we're going to be micro-managing this process through discovery conferences, meet and confer sessions, hopefully not much motion practice but certainly there's the potential for motion practice. And frankly, from my perspective, every monthly status conference will include, from my perspective, an opportunity for parties who believe they are

aggrieved by the order to express themselves. But that right to be heard pretty much on a monthly basis is one that I assume that parties will choose to exercise with discretion and with only good cause for appearing to be heard on a discovery issue.

I'm satisfied that this evolving order represents the best of what litigators and what bankruptcy lawyers in this district are capable of generating. As I reviewed it in its early form and in its now present form, it occurred to me that what was really happening here was that lawyers for parties who were directly affected by a confirmation process that will no doubt be extraordinary in its intensity and detail, have effectively cobbled together a discovery protocol that is unique to the case and which deals with the limitations of the Federal Rules of Civil Procedure as those rules apply to a case of this magnitude.

In the ordinary course of developing rules, people get together and spend time on a line-by-line basis examining not only the language used but the unintended consequence of the language used. And there's a comment process that allows individuals who are not in the room to review the words, consider the implications, and the language can then be later adjusted.

I think to some extent, even as I approve this order, we're entering a comment phase in that while this is an order that has the force of a court order, to the extent that there

are parties, notably the objectors who remain outstanding, and those who expressed objections in the past and participated in the process who believe in practice that this is, for whatever reason, not leading to substantial justice in the management of the case during this key period of time, my door is open. And if parties seek, for good cause, appropriate adjustments, I have every reason to believe that I will be responsive to those requests.

Perhaps the most difficult issue has been raised by the U.S. trustee because it goes to issues of public access to confidential documents. And I'm going to overrule the objection of the U.S. trustee with the understanding that what's really happening doesn't change the public's right to have access to confidential information, rather, it goes to the burden of who has to go forward with the request for sealing as opposed to who has the burden of seeking to unseal an otherwise sealed document.

While it's a somewhat different circumstance, I am reminded of what occurred when the examiner, Mr. Valukas, filed his initial examiner's report under seal and it was thereafter, following motion practice, unsealed. For a period of about four or five weeks I believe I was the only person who had access to that report and I read it with great interest, largely because I knew it was for my eyes only. But the public ultimately, and it wasn't a long delay, obtained full access to

that report.

In effect, this order balances the need of parties with a right to participate in an open process to gain access to all relevant information, some of which is extraordinarily sensitive. And so I am satisfied that in this case it almost goes without saying that a substantial portion of the information to be reviewed and assessed will be critical, sensitive, commercial information of the sort that goes to valuation and a recovery analysis on an entity-by-entity basis as well as on a fully consolidated basis.

The uncontested matters that were on the docket today are an example of the complexity, but those uncontested matters truly were just the tip of the iceberg. Whether we're talking about an investment in Innkeepers or an investment in 25-45 Broad Street or the value of the Pine securitization, we are simply identifying aspects of that which is extraordinarily complicated and ultimately sensitive information.

As counsel for the ad hoc committee observed earlier, a transaction with Bankhaus approved last month was itself an extraordinarily complicated analysis. These transactions become public when they're filed in court for bankruptcy court approval, but before they become public they are no doubt extraordinarily sensitive.

I am also aware, based upon my periodic review of the electronic docket in this case, that a great many of the docket

entries relate to claims transfers. I know nothing of the specifics, I only know that they have occurred. It is obviously of critical importance that sensitive information that could go to the market be kept confidential.

For that reason, I believe, based upon my knowledge of the case as I have been observing it over the last number of years, that there is no question that a great deal of the information to be shared in discovery will fit the definition of confidential and sensitive information. And to the extent that such information is used in a pleading, I consider it appropriate that there be what amounts to an automatic sealing order as to such information, provided of course that the parties who have designated it as confidential have done so in good faith. This is all without prejudice to the rights of any party in interest, including the U.S. trustee, to seek to obtain an unredacted copy of such materials on a lawyers-only basis.

With the understanding that the parties are probably going to do some final revisions to the form of order to accommodate some of the events of today's hearing, I will bench order approval of the procedures in their present form as modified with the consent of the parties. And if there's nothing more we're adjourned until 2:00.

(Whereupon these proceedings were concluded at 1:37 p.m.)

I N D E X

R U L I N G S

I N D E X, cont'd

R U L I N G S

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

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Date: April 15, 2011